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A P P E A R A N C E S

ON BEHALF OF PLAINTIFF:

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ON BEHALF OF DEFENDANTS:

City of Columbus Assistant City Attorney  
77 N. Front Street  
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By Richard N. Coglianese, Esq.

ALSO PRESENT:

Kevin C. Morgan II

Monday Morning Session

July 22, 2019, 9:34 a.m.

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S T I P U L A T I O N S

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It is stipulated by counsel in attendance that the deposition of Kimberley K. Jacobs, a witness herein, called by the Plaintiff for cross-examination, may be taken at this time by the notary pursuant to notice and subsequent agreement of counsel that said deposition may be reduced to writing in stenotypy by the notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the notary is waived.

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(Exhibits retained by Spectrum Reporting LLC.)

1 KIMBERLEY K. JACOBS

2 being first duly sworn, testifies and says as  
3 follows:

4 CROSS-EXAMINATION

5 BY MR. VARDARO:

6 Q. Could you state your name for the  
7 record.

8 A. Kim Jacobs.

9 Q. All right. And I think we've been  
10 introduced before, but my name is Jeff Vardaro.  
11 I'm representing Kevin Morgan in this case. And I  
12 will be asking you most if not all the questions  
13 today.

14 A. Okay.

15 Q. I know from another case we've been  
16 working on that you've been deposed fairly  
17 recently. But just to try to refresh some of the  
18 ground rules for you -- well, first of all, have  
19 you been in any depositions since your deposition  
20 in the Carl Shaw case a few weeks ago?

21 A. No.

22 Q. Okay. As I said, I'll be asking you  
23 most if not all the questions. If I ask you a  
24 question and you don't understand the question,

1       you understand that you can ask me to rephrase the  
2       question?

3       A.           I do.

4       Q.           And you'll do that if you don't  
5       understand it?

6       A.           I will.

7       Q.           And if you answer a question and you  
8       don't ask me to rephrase it, I'm going to assume  
9       you understood the question unless you tell me  
10      otherwise, okay?

11      A.           Okay.

12      Q.           The other thing is I'm going to be  
13      asking you some questions about different things  
14      that happened a few years ago. And I understand  
15      that your memory, like everybody else's, is not  
16      perfect. So if you realize in the middle of the  
17      deposition that you need to add something to what  
18      you said before or correct something that you got  
19      wrong, you understand you can do that even in the  
20      middle of a question if you need to.

21      A.           Okay.

22      Q.           And will you do that for me?

23      A.           Yes, I will.

24      Q.           Okay. I'm going to assume no new

1 medical conditions or drugs or medications that  
2 you're on since the last deposition?

3 A. Correct.

4 Q. Okay. No new criminal convictions  
5 since then?

6 A. No.

7 Q. Okay. And did you have an opportunity  
8 to meet with counsel to prepare for this  
9 deposition?

10 A. I did.

11 Q. When was that?

12 A. Last week.

13 Q. Okay. Just the one time?

14 A. I believe on Thursday.

15 Q. Okay.

16 A. That's all I recall.

17 Q. Okay. And for about how long?

18 A. Probably under two hours.

19 Q. Okay. Did you review any documents to  
20 prepare for the deposition?

21 A. I did.

22 Q. What did you review?

23 A. I reviewed a copy of the investigation  
24 summary and the charges and some prior

1 disciplinary decisions that might be brought up  
2 as, you know, comparable or whatever.

3 Q. Okay. So first of all, you said the  
4 investigative summary. You're talking about the  
5 internal affairs summary of the Kevin Morgan  
6 investigation?

7 A. I am.

8 Q. Okay. And the charges against Kevin  
9 Morgan is what you're referring to?

10 A. Correct.

11 Q. Okay. Did you review any of the  
12 interview transcripts or hearing transcripts?

13 A. No.

14 Q. Okay. Did you listen to any  
15 recordings?

16 A. No.

17 Q. Okay. In terms of -- did you review  
18 the lawsuit in this case?

19 A. No.

20 Q. Have you ever seen it?

21 A. I don't recall.

22 Q. Okay. In terms of the other  
23 disciplinary decisions, can you remember what they  
24 were, the ones that you said you reviewed?



1 A. I reviewed many of the decisions that I  
2 made as chief of police.

3 Q. Okay.

4 A. So back to 2012 forward that were  
5 resulting in departmental charges or suspensions.

6 Q. Okay. But you don't remember which  
7 particular ones?

8 A. There's -- I don't know -- dozens of  
9 them.

10 Q. Okay. So you reviewed dozens of  
11 investigations to prepare for this?

12 A. Not investigations.

13 Q. Okay.

14 A. A summary.

15 Q. You reviewed dozens of internal affairs  
16 summaries of those?

17 A. No. No.

18 Q. Oh, I'm sorry?

19 A. We kept -- we posted a blurb on our  
20 division's intranet that explained what the  
21 charges were and gave a paragraph of what the case  
22 was about.

23 Q. Okay. Is there a name for that  
24 document in the department?

1 A. The discipline database.

2 Q. The discipline database.

3 Okay. Is it also referred to as like a  
4 disciplinary grid or something to that effect?

5 A. Maybe somebody does.

6 Q. Not by you?

7 A. No. It's on the division's intranet.

8 Q. Okay.

9 A. Under the Professional Standards Bureau  
10 discipline link.

11 Q. Okay. What information does it have on  
12 it for each case?

13 A. Generally the officer's name, the rule  
14 of conduct that was violated, the chief's  
15 recommendation. And then oftentimes the  
16 director's recommendation and then a summary of  
17 the case like I said and usually a paragraph or  
18 two.

19 Q. Okay. And that's just kept updated on  
20 a, like, sort of a rolling basis?

21 A. Yeah. The professional standards  
22 bureau.

23 Q. Okay.

24 A. Discipline grievance lieutenants are

1 responsible for keeping it up to date.

2 Q. Okay. How far back does it go?

3 A. Well, I think at least until 2012, but  
4 I don't know if it goes back further than that. I  
5 was interested in making sure that our personnel  
6 were informed of some of those decisions so that  
7 they would have notice of what types of incidents,  
8 about what type of thing to prevent rumors and  
9 just to give notice.

10 Q. Because officers might otherwise talk  
11 without information about what happened in a  
12 particular disciplinary case, is that the --

13 A. That's part of it.

14 Q. Okay. Well, what's the other part?

15 A. Just so that they understand that there  
16 are ramifications to behavior that is in violation  
17 of our rules.

18 Q. Okay. You want the consequences for  
19 misconduct to be clear and predictable for the  
20 officers I guess?

21 A. I believe that it's a responsibility to  
22 give them real information rather than to just  
23 leave it out there and let word spread verbally  
24 rather than in written form. And to let them know

1       that if they want to know more, they can, you  
2       know, find out. But a lot of times things get  
3       discussed and it's not based on the real facts, so  
4       it's --

5       Q.           Okay. Well, I guess I'll go back to my  
6       question, though. You do want the consequences  
7       for officers' misconduct to be clear and  
8       predictable for officers so they know the  
9       consequences of actions?

10      A.           I believe it's important for them to  
11      understand what the outcomes of certain cases  
12      were, which might lead them to understand what the  
13      consequences could be for similar behavior, yes.

14      Q.           Okay. And I'm sorry for the pause, but  
15      I want to get a better understanding of this  
16      document, the disciplinary summary document that  
17      we were just talking about. And I will say I have  
18      not printed out this document that we've been  
19      provided in discovery, but I have it on my  
20      computer here.

21                   So for the record, I'm showing you a  
22      screen from my computer here, and I just want you  
23      to tell me whether this document that I'm showing  
24      you is the same as what you're describing or is it

1 something different. And if it's too small, you  
2 can let me know.

3 A. It goes back to 2007. Are there other  
4 pages?

5 Q. There's multiple pages.

6 A. How do you page?

7 Q. I can --

8 A. I mean, that doesn't look like the  
9 exact image of mine.

10 Q. Okay. Is there more information in  
11 yours about what the cases are about?

12 A. I would say so.

13 Q. Okay.

14 A. Yeah. Yes.

15 Q. When was it that you reviewed that  
16 summary?

17 A. Yesterday and today.

18 Q. Okay. So you still have access to the  
19 division intranet?

20 A. No. No. I had a printed out version  
21 from the professional standards.

22 Q. Okay. From when? When was it printed  
23 out?

24 A. Last week.

1 Q. Oh, okay. So the division provided it  
2 to you --

3 A. After.

4 Q. -- in preparation for the deposition?  
5 I'll just say for the record I don't  
6 think that's something we've been provided.

7 MR. COGLIANESE: I thought it was. But  
8 I can talk to Van and make sure you get a copy.

9 MR. VARDARO: It will be helpful as  
10 soon as possible.

11 MR. COGLIANESE: Yeah. I believe  
12 you've been provided a copy.

13 MR. VARDARO: Okay. I think I would  
14 have seen that in the file, but if you -- if you  
15 can point me to it, we'll deal with it after the  
16 deposition.

17 BY MR. VARDARO:

18 Q. Other than that summary that we were  
19 just talking about, did you review any other  
20 materials related to other cases besides Kevin  
21 Morgan's to prepare for this deposition?

22 A. No.

23 Q. Okay. So you haven't for instance  
24 reviewed the internal affairs summary for the

1 investigation of Sergeant Constable and Sergeant  
2 Jones and some of the other sergeants?

3 A. I didn't review any materials from IA,  
4 no.

5 Q. Okay. So I think we listed the Morgan  
6 internal affairs summary, the Morgan charges, that  
7 disciplinary summary we were just talking about.  
8 I don't think you mentioned, were there any other  
9 documents that you reviewed?

10 A. No.

11 Q. Okay. We went through the last time we  
12 did your deposition -- I won't go through the same  
13 kinds of things that we did with you as  
14 background, we'll just rely on what you told us  
15 previously.

16 But I do have a few more officers to  
17 ask about in terms of your personal or  
18 professional relationships. And just to try to  
19 keep it relatively quick, I'm really just asking  
20 for each of these people whether you ever were  
21 their direct supervisor, whether you have a  
22 personal relationship with them, positive or  
23 negative outside of work, or whether they're a  
24 person you particularly didn't get along with, or

1 if they're -- and I guess I'll add if there's any  
2 reason that you have to believe that they're not  
3 honest or trustworthy I guess.

4 First one Sergeant Ray Meister?

5 A. I don't believe I've ever been his  
6 direct supervisor. I don't have a personal  
7 relationship with him. I don't have any reason to  
8 believe he's not trustworthy. What was the other  
9 question? Whether I --

10 Q. Oh, any reason --

11 A. -- I don't like him?

12 Q. Any conflict or any, you know --

13 A. No.

14 Q. -- reason that you had to have a  
15 negative relationship with him?

16 A. Not that I'm aware of.

17 Q. Okay. Sergeant I think it's Daniel  
18 Weaver.

19 A. I don't have a personal relationship  
20 with him. Don't believe I've ever been a direct  
21 supervisor of him. Don't have any reason to not  
22 trust him at all.

23 Q. Okay. Sergeant Ken Decker?

24 A. Same.



1 Q. Okay. Sergeant Babcock?

2 A. Never been his direct supervisor.  
3 Don't have a personal relationship with him. I  
4 don't have any evidence that I can't trust him.

5 Q. Okay. You said that in a way that  
6 makes me think -- do you have some?

7 A. Just a --

8 Q. Repeat --

9 A. Just an old, old, old case, you know, I  
10 wondered whether or not, you know, he got his  
11 facts right.

12 Q. Okay.

13 A. But it's --

14 Q. What was that about?

15 A. About a kick to the head back in --  
16 well before 2010, I can't remember the date.

17 Q. Okay. Before you were chief?

18 A. Yes.

19 Q. Okay. It was him that kicked somebody  
20 in the head?

21 A. No. It was just his -- his review of  
22 it and various other things.

23 Q. Okay.

24 A. Like I said, I don't have any reason to

1 say that I can't trust him.

2 Q. Was it a patrol officer that did the  
3 kick?

4 A. Yes.

5 Q. Who was the officer?

6 A. Well, it was not sustained, so I can't  
7 prove that it was.

8 Q. Okay. But who was the officer?

9 A. I believe it was Norm Baldwin.

10 Q. Okay. And Sergeant Babcock had done  
11 some kind of review of that?

12 A. Yeah.

13 Q. And concluded that it either didn't  
14 happen or --

15 A. Yeah. I think he might have been at  
16 the scene or something along those lines.

17 Q. Okay.

18 A. I don't recall.

19 Q. And you suspected that he was  
20 protecting the patrol officer or --

21 A. I thought that might be a possibility.

22 Q. Okay. This was when you were in  
23 internal affairs or --

24 A. No. A deputy chief reviewing --

1 Q. Okay.

2 A. -- the investigation.

3 Q. Okay. But despite your suspicion in  
4 this case, you went along with the not sustained  
5 recommendation because you didn't have any  
6 evidence?

7 A. That's not the way that I would  
8 describe it.

9 Q. Okay. How would you describe it?

10 A. The information that first came to me  
11 made me believe that the actual incident had  
12 occurred as alleged. I wasn't satisfied that  
13 there was enough information to make my decision.  
14 I sent it back for more information. And by the  
15 time it came back, the stories had been jumbled  
16 and the witnesses were no longer as certain as  
17 they were originally. And so despite my concerns  
18 that it was in fact true, I could not find the  
19 evidence to sustain it.

20 Q. Okay. When you say "the witnesses,"  
21 were those police witnesses or civilian witnesses?

22 A. Civilian.

23 Q. Okay. So they went back and reviewed  
24 -- interviewed the civilian witnesses again

1 after --

2 A. Yes.

3 Q. -- and then their stories had either  
4 changed or their memories had faded to that  
5 effect?

6 A. Correct.

7 Q. Who was the chief at the time?

8 A. Probably Chief Distelzweig.

9 Q. Okay. And the chief -- well, this was  
10 not sustained, so the chief didn't overrule that  
11 and sustained discipline against Officer Baldwin?

12 A. Correct.

13 Q. Okay. There was no video, I assume?

14 A. Not to my recollection.

15 Q. Okay. Sergeant -- I'm going back to  
16 your relationships.

17 A. Yeah.

18 Q. Sergeant Richard Brooks?

19 A. I don't believe I've ever been a direct  
20 supervisor. I -- what was the other one?

21 Q. Do you have a friendship outside of  
22 work?

23 A. Oh, no.

24 Q. Okay. Never an enemyship outside of

1 work?

2 A. No, not at all. I -- I totally respect  
3 Sergeant Brooks.

4 Q. Okay. Officer Anthony or Tony Roberts?

5 A. I don't believe I've ever been a direct  
6 supervisor. I don't know him personally outside  
7 of work. And I have no reason to -- to not  
8 believe that he's trustworthy.

9 Q. Okay. Have you ever dealt with any  
10 disciplinary matters dealing with Tony Roberts?

11 A. Potentially. But I don't recall what.

12 Q. Okay. You have a memory that you might  
13 have dealt with discipline with him, but you don't  
14 remember what it was about?

15 A. Correct.

16 Q. Okay. A county prosecutor named Jeff  
17 Blake, do you know him?

18 A. No.

19 Q. Okay.

20 A. I mean I might have met him at some  
21 point in time.

22 Q. Okay.

23 A. But I don't know him as a, you know,  
24 personal friend or anything like that.

1 Q. Okay.

2 A. I've met a lot of prosecutors, so I  
3 can't say that I haven't met him.

4 Q. Okay. No particular recollection or  
5 impression of Jeff Blake then?

6 A. No.

7 Q. Okay. Officer Christopher Bond?

8 A. I don't believe I've ever directly  
9 supervised him. I don't have a personal  
10 relationship with him off duty. And I trust him  
11 for --

12 Q. Okay.

13 A. You know, I don't have any reason not  
14 to trust him at all.

15 Q. Okay. George Speaks?

16 A. He was my boss. I don't believe that  
17 we've -- well, of course I've never supervised  
18 him.

19 Q. Sure.

20 A. I don't think that we've done anything  
21 really socially. We've done things off duty, you  
22 know, like get together for lunch or dinner or  
23 something like that maybe once or twice.

24 Q. Uh-huh.

1 A. But more of a celebratory, you know,  
2 retirement kind of a thing or whatever else.

3 But --

4 Q. Okay.

5 A. -- I don't have any reason to not trust  
6 him at all.

7 Q. Okay. You consider him a friend?

8 A. A colleague. I don't know. He kind of  
9 -- you know, what's a friend? You know, I like  
10 him.

11 Q. Uh-huh.

12 A. I've dealt with him for many, many  
13 years. So, yeah, I suppose you could call him a  
14 friend. But I don't socialize with him.

15 Q. All right. So kind of a work friend?

16 A. Correct.

17 Q. Okay. Van Irwin?

18 A. I don't believe I've ever directly  
19 supervised him. I don't have an off duty personal  
20 relationship with him. I totally trust him.

21 Q. Okay. Van Irwin at least during the  
22 time we're talking about and maybe now was in  
23 professional standards?

24 A. Correct.

1 Q. What was his rank, lieutenant?

2 A. Lieutenant.

3 Q. Okay. So is there a commander of  
4 professional standards?

5 A. Yes.

6 Q. Okay. Who was the commander at the  
7 time of this? You don't remember. Okay.

8 A. Potentially Commander Hyland.

9 Q. Okay.

10 A. But I don't know.

11 Q. Okay. I had a misunderstanding of how  
12 professional standards works, but I think you  
13 cleared it up.

14 Same question for I think it's Jeff  
15 Lokai?

16 A. Same. Don't have a personal  
17 relationship with him. Don't believe I've ever  
18 supervised him directly. And I trust him.

19 Q. Okay. Kevin Morgan?

20 A. Kevin Morgan?

21 Q. Never his direct supervisor?

22 A. Never supervised him. Don't have a  
23 personal relationship with him. And certainly I  
24 had concerns about being able to trust his word as



1 a result of this investigation.

2 Q. Okay. But no other reason?

3 A. No.

4 Q. Okay. Had you had any prior dealings  
5 with Kevin Morgan prior to this investigation?

6 A. Not that I recall.

7 Q. Okay. Bronson Constable?

8 A. Never supervised him. Don't have a  
9 personal relationship with him. And I don't  
10 really trust some of the things that he has said  
11 or done.

12 Q. Okay. Can you tell me the reason why  
13 you don't trust some of the things he's said or  
14 done?

15 A. I'm aware of previous disciplinary  
16 issues that he's been involved in that lead me to  
17 believe that he's not always truthful.

18 Q. Okay. Multiple incidents?

19 A. Uh-huh.

20 Q. I'm sorry. You have to say yes or no.

21 A. Yes.

22 Q. Okay. How about Doug Jones?

23 A. Same. I've never direct -- well, I  
24 don't think I've ever directly supervised him.

1 Don't have a personal relationship with him. And  
2 pretty much the same, but not to the same level as  
3 Bronson Constable. He hasn't been involved in a  
4 lot of other incidents that I'm aware of regarding  
5 his truthfulness; it certainly came into question  
6 in regards to one investigation.

7 Q. That's the time reporting, leave  
8 reporting investigation he was involved in?

9 A. Correct.

10 Q. Okay. And we'll get into that later  
11 obviously.

12 Zane Kirby?

13 A. Same with that. But I -- I don't have  
14 any reason not to basically trust him.

15 Q. Okay.

16 A. I think that he admitted what had gone  
17 on with him and acknowledged his misdeeds.

18 Q. Okay. And again we'll go a little  
19 deeper into that.

20 Denise Reffitt?

21 A. Haven't personally supervised her.  
22 Don't have a personal relationship with her off  
23 duty. Don't have any reason not to trust her.

24 Q. Okay. My understanding she was

1 previously an internal affairs at some point?

2 A. Yes.

3 Q. But not while you were over internal  
4 affairs?

5 A. Yes. Yes, she was.

6 Q. But not your --

7 A. I was the commander and she was a  
8 sergeant.

9 Q. Okay.

10 A. There was lieutenant in between.

11 Q. Okay. Doug Williams?

12 A. I don't believe I've ever supervised  
13 him. Don't have a personal relationship with him.  
14 And certainly I have concerns sometimes about  
15 whether I can trust him or not.

16 Q. Okay. What concerns do you have about  
17 Doug Williams?

18 A. There have been a number of incidents  
19 that he's been involved in or alleged to have been  
20 involved in where things have come up that I just  
21 don't know how truthful he's been on some of those  
22 things, but haven't been able to necessarily prove  
23 any of those types of things.

24 Q. Okay. He's never been charged with

1 untruthfulness?

2 A. Not to my knowledge.

3 Q. Okay. He's never had a sustained  
4 charge of untruthfulness certainly?

5 A. Not to my knowledge.

6 Q. Okay. Can you tell me anything about  
7 any examples of those incidents where you felt  
8 like he may not have been truthful?

9 A. Yeah. I think that he's reported his  
10 gun being stolen two or three times, which is just  
11 very highly unusual. And I don't have any more  
12 specifics. It's just that he doesn't have the  
13 best reputation and I've --

14 Q. Okay.

15 A. -- decided that I need to, you know,  
16 deal with the facts on what I do know and what I  
17 don't. But you asked me if I trust him, and I  
18 said no.

19 Q. Okay. David LaRoche, did you ever  
20 supervise him directly?

21 A. No. And I don't have a personal  
22 relationship with him. And I don't have any  
23 reason to say I -- I think that he kind of fessed  
24 up to some of his misdeeds, if you will, rule

1 violations. But certainly there was questions  
2 that were brought forth that made me wonder  
3 whether you can always trust him, but that was  
4 back -- back related to one investigation.

5 Q. Okay. Joseph Houseberg?

6 A. Same thing with the first two. The  
7 third one there was a question about being able to  
8 trust him, but it got resolved through the  
9 disciplinary process.

10 Q. Okay. Zach Rosen?

11 A. Same thing. I would say that as far as  
12 trusting him, I think that he has made a lot of  
13 questionable decisions, and so I wouldn't  
14 necessarily put a lot of faith in some of his  
15 decision making.

16 Q. You have questions about his judgment?

17 A. Yes.

18 Q. But questions about his honesty?

19 A. I don't have any indication that he's  
20 lied about stuff.

21 Q. Okay. Eric Moore?

22 A. I have a lot of questions about his  
23 truthfulness.

24 Q. Okay. And I think we talked about your

1 relationship in the previous --

2 A. Yeah.

3 Q. I don't remember whether we asked you  
4 your relationship with Melissa McFadden.

5 A. I don't believe I've ever directly  
6 supervised her. I don't have a personal  
7 relationship with her. And I would say that I  
8 question, you know, how much I can trust her.

9 Q. Okay. Has she ever had a sustained  
10 untruthful?

11 A. Not to my knowledge.

12 Q. Okay. All right. I want to ask you  
13 some general questions about the way the  
14 disciplinary process worked. And I will say I'm  
15 really talking about during the period when you  
16 were chief of police.

17 A. Okay.

18 Q. Well, first of all, actually, that  
19 raises an interesting one for me.

20 Do you feel like you made any changes  
21 in the way the disciplinary process worked when  
22 you became chief compared to chiefs before you?

23 A. Well, I can't say for sure because I  
24 didn't see them in action all the time when they

1 were making their previous decisions. I tried to  
2 make a point of being fair and informed. You  
3 know, sharing the information, I put notice out  
4 when I felt it was appropriate to advise people of  
5 changes perhaps in what discipline might be, the  
6 outcome of certain things. I worked with our  
7 labor attorneys and HR officials to try to make  
8 sure that we were making solid decisions.

9 Q. Okay. But you didn't -- when you came  
10 into office as chief, you didn't sort of set out  
11 to make particular changes that you're -- that you  
12 can remember in terms of how disciplinary  
13 processes are handled or how discipline is meted  
14 out?

15 A. Well, by saying "changes," I'm not sure  
16 again.

17 Q. Uh-huh.

18 A. But I can tell you that I was very  
19 determined to make the disciplinary process  
20 transparent and one that relied on just cause, one  
21 that, you know, took things into consideration  
22 that decision-makers have to have. I think I  
23 documented more than previous chiefs. But I had  
24 studied, you know, discipline philosophies and

1 various other things and was determined to make  
2 this process one that I felt could stand up to  
3 scrutiny.

4 Q. Okay. What did you do to study  
5 discipline philosophies?

6 A. I read articles about discipline and,  
7 you know, whether you post information, whether  
8 you don't post information, how you do it. We had  
9 looked at what they call education based  
10 disciplinary systems. I'd looked at matrixes that  
11 other agencies have used. You know, I had done a  
12 lot of study about that when I was in internal  
13 affairs. So going to training courses, reading  
14 articles, looking up things, like I said,  
15 consulting with experts, I felt like I had done a  
16 lot of research about how to manage the  
17 disciplinary process.

18 Q. Okay. In terms of the articles that  
19 you read, was there like one or two that stuck out  
20 as oh, here, this is what I wanted to do with the  
21 department?

22 A. No, huh-uh.

23 Q. Okay. Were they typically articles  
24 circulated among chiefs of police like through



1 organizations like International Association of  
2 Chiefs of Police, or was it academic articles, or  
3 what are we talking about?

4 A. I would say a combination of all of  
5 that. And then there's websites, AELE and various  
6 other places that you can, you know, see  
7 information about what's been done in other  
8 government agencies not just police agencies. So,  
9 no, nothing -- not one thing in particular, but  
10 there was a compilation of a lot of different  
11 things.

12 Q. Okay. When you say the -- you  
13 mentioned that you looked at discipline matrices  
14 from other departments. First of all, did the  
15 Columbus Division of Police have a discipline  
16 matrix when you were chief?

17 A. No.

18 Q. Has it ever had one to your knowledge?

19 A. As far back as I know, no.

20 Q. Okay. What departments matrix or what  
21 department -- what different department's  
22 matrixes?

23 A. Phoenix.

24 Q. Okay. Phoenix, Arizona you're talking

1 about?

2 A. Yeah. LA has done an education based  
3 thing and they have come up with some standards.  
4 But we have an agreement with the union that we  
5 don't create a matrix without negotiating, so it  
6 wasn't something that we were going to even try to  
7 do. I don't like the philosophy of a matrix  
8 because it doesn't take into account the case by  
9 case details that are different among things.

10 Q. Sure.

11 What is education based discipline?

12 A. The philosophically -- Lee Baca I  
13 believe from LA.

14 Q. Is it the LA County Sheriff, former?

15 A. He's in prison now I think.

16 Q. Yeah. I was going to say. That's your  
17 guru?

18 A. But he was touted as this, you know,  
19 great guy that, you know, came up with this  
20 philosophy about how to correct behavior through  
21 training. And after our review of it, it seemed  
22 like their disciplinary process was even harsher  
23 than ours and they were backing off some of that  
24 really harshness. So once again it didn't seem to

1 be very relevant to our situation.

2 Q. Okay. So education based discipline is  
3 not necessarily the philosophy you were trying to  
4 use?

5 A. Correct.

6 Q. You had mentioned that you were posting  
7 notice about changes in discipline?

8 A. I would send out announcements. I  
9 talked to FOP and said from here on out, you know,  
10 the disciplinary process for, for instance, a  
11 drunk driving situation will be 80 hours minimum,  
12 and that will be minimum based on behavior that  
13 may or may not accompany any of that. Prior to my  
14 announcement, and prior to my being chief, the  
15 kind of standard for a drunk driving departmental  
16 charge was 40 hours suspension, and so I went  
17 along with that, but I grew very concerned that it  
18 wasn't sending the right message, so I wanted to  
19 change that. And so I put out notice to everybody  
20 saying that if you get charged with drunk driving,  
21 it's going to be at least 80 hours if not more and  
22 up to termination. We did the same thing for  
23 accidental discharges that could have been  
24 prevented if you had used the bullet trap at

1 substations.

2 Q. What's a bullet trap?

3 A. It's basically a tube where you would  
4 point the barrel of your shotgun so that if it  
5 accidentally goes off, the discharge would go into  
6 this barrel which is metal and would contain the  
7 pellets rather than it blowing a hole in the wall  
8 or hurting somebody.

9 Q. So this is a specifically about  
10 accidental discharges that happen inside a  
11 substation?

12 A. Yes.

13 Q. And it's about -- the discharge would  
14 happen when somebody is taking the shotgun off a,  
15 like --

16 A. They exchange the shotgun from shift to  
17 shift to shift to shift, and so they're supposed  
18 to make the shotgun cruiser ready. And by that,  
19 that means that you've unloaded it, reloaded it  
20 and you know what position it's in, whether the  
21 safety's on, and all that kind of stuff. And some  
22 people got complacent about that, and a number of  
23 holes appeared in the substations. And typical  
24 discipline in the past had been a written

1       reprimand for all accidental discharges.

2       Q.           Uh-huh.

3       A.           And I was not convinced that that was  
4       the way to go. We had bullet traps that we made  
5       available to everyone and I think the notice was  
6       not just about the bullet trap but -- that was the  
7       main focus of that, to try to get officers to use  
8       the bullet trap in the substations but also  
9       whenever you're emptying a weapon to do it in a  
10      safe manner and use whatever tools are available  
11      to ensure that it doesn't go off accidentally.

12     Q.           Okay. Other than the bullet trap rule  
13     -- I'm going to call it a rule; I understand that  
14     there may be issues with the union about whether  
15     something is really a rule or not I guess. But  
16     your rule of thumb or whatever you want to call it  
17     for accidental discharges and for drunk driving  
18     incidents, any other changes that you remember  
19     posting?

20     A.           Related to the drunk driving one, I  
21     believe I also included that if you lost your  
22     driver's privileges for a long period of time,  
23     that that would be taken into consideration as  
24     well. If you've refused to blow and they took

1 your driver's license -- in some counties they  
2 took your driver's license for a year and no  
3 occupational privileges, meaning that you cannot  
4 perform the duties of a police officer for a year.  
5 And I consider that to be serious misconduct.

6 Q. Would you say --

7 A. I don't remember anything else.

8 Q. I mean that the DUI or drunk driving  
9 issue was a priority for you for any particular  
10 reason or --

11 A. I had a lot of them --

12 Q. And --

13 A. -- come before me.

14 Q. Okay. And you felt like officers  
15 weren't taking it seriously enough or --

16 A. I was very concerned that too many  
17 officers were getting intoxicated and driving.

18 Q. Okay.

19 A. And it -- you know, potentially has the  
20 -- you know, you could kill somebody. But also  
21 just the damaging effects that it does on, you  
22 know, our reputation, their reputation, you know,  
23 it's financially damaging to whoever is involved.  
24 And then, you know, you've got to worry whether or

1 not they're alcoholics and whether or not they're  
2 abusing alcohol. So I thought by making the  
3 corrective action harsher that that might get  
4 their attention and they might use, you know, a  
5 ride sharing service or call a friend or something  
6 else instead of being out there and driving.

7 Q. Okay. You touched on a number of  
8 things, I guess I'll come back to them in just a  
9 minute.

10 But going back sort of to the general  
11 issues about how discipline was handled while you  
12 were chief, can you tell me once -- as I  
13 understand it, a disciplinary process might  
14 initiate with an internal affairs investigation or  
15 a chain of command investigation. At some point  
16 in the process, there's a determination of whether  
17 there's going to be departmental charges against  
18 the officer, and we can talk about that in a  
19 minute. But once there's been a departmental  
20 charge sustained against an officer, can you tell  
21 me -- can you give me an overview of how is the  
22 level of discipline for that charge determined?  
23 Yeah. And, again, all of these questions I'm  
24 really asking about while you were chief.

1           A.           Okay. There is no matrix as we've  
2 previously discussed. All of it is taken into  
3 consideration with regard to the evidence before  
4 me. If there are any previous comparables for  
5 this particular case or for that particular rule  
6 of conduct, that's looked at. You know, whether  
7 or not somebody has accepted responsibility, their  
8 tenure, you know, if they've had a -- well, we can  
9 only look back four years. But whether they've  
10 had a good disciplinary history, a good work  
11 history, the level of training that they've  
12 received, if they've had notice, did the  
13 investigation, you know, prove things, is it  
14 51 percent preponderance of the evidence, is it  
15 clear and convincing, is it, you know, a greater  
16 standard. And then just what -- ultimately for my  
17 recommendation, and understand I didn't always  
18 make the final decision, my recommendation based  
19 on what I think is appropriate for not only the  
20 rule violation but for what I believe is going to  
21 accomplish the appropriate corrective action, you  
22 know, for this particular officer, you know, and  
23 whether or not it may or may not be arbitrated is  
24 at least sometimes discussed. And whether or not,



1       you know, it can be through that process and stand  
2       up to it is another one.

3       Q.           Okay. I want to talk about two  
4       particular -- I have questions about I guess two  
5       particular things on that list. One is you said  
6       their tenure, the officer's tenure?

7       A.           Yeah.

8       Q.           Do you literally just mean how many  
9       years they've been in the department?

10      A.           It just calls for at least considering  
11      the officer's work performance and their years of  
12      service.

13      Q.           Okay.

14      A.           I had a case where I'd recommended  
15      termination for somebody that I believe was  
16      stealing. And the judge basically said they've  
17      been an outstanding employee for many years and  
18      you get them back.

19      Q.           Okay.

20      A.           The arbitrator.

21      Q.           Who was that?

22      A.           The officer?

23      Q.           Yeah.

24      A.           Chad Knode.

1 Q. Okay. What did Chad Knode do?

2 A. He participated with another officer  
3 who went to prison in --

4 Q. Oh, this was -- I think we've heard  
5 about things this was stealing military surplus or  
6 something like that?

7 A. Yes. He took equipment that belonged  
8 to either the City of Columbus or the military --

9 Q. Uh-huh.

10 A. -- to scrap yards, scrapped it and took  
11 the cash and did not return that money to the City  
12 of Columbus.

13 Q. Do you remember what his tenure was at  
14 the time?

15 A. I think he had 20-something years.

16 Q. Okay. And did he have basically  
17 20-something years of no prior discipline?

18 A. Well, we're only allowed to look back  
19 four years.

20 Q. Okay.

21 A. And the records aren't kept beyond six  
22 years, so --

23 Q. Okay.

24 A. -- if there was disciplinary action.

1 If there wasn't, then it was three years.

2 Q. Okay. You said the level of training  
3 the officer had?

4 A. Yeah. Whether or not they've been  
5 trained in this particular, you know, situation.

6 Q. In the sense that if it's something  
7 that they may have never encountered before and  
8 think just mishandled it, that would be treated  
9 less seriously if they knew very well that what  
10 they were doing was wrong?

11 A. If they weren't trained on it, then it  
12 would be the responsibility of the City or the  
13 division for not training them.

14 Q. Okay.

15 A. Unless it was a violation of law and,  
16 you know --

17 Q. Sure.

18 A. They had it right in front of them do  
19 this do, you know.

20 Q. Okay.

21 A. Then that's the training, don't do  
22 this.

23 Q. Okay. And that's my -- that was going  
24 to be my first additional question here, which is

1       whether the conduct is criminal, is that a factor  
2       in terms of how serious it would be --

3       A.           Well --

4       Q.           -- treated for discipline?

5       A.           -- certainly if it's criminal and we've  
6       got a conviction, then we generally do a rule of  
7       conduct violation regarding a conviction of some  
8       sort. I don't -- I mean, a lot of these cases  
9       that are investigated criminally might not be  
10      criminal. Some of them are, some of them aren't.

11      Q.           Uh-huh.

12      A.           So I guess that you could say that that  
13      is part of the consideration.

14      Q.           Okay. I guess my question is I've seen  
15      a lot of investigations as we've reviewed these  
16      where everything is put on hold in terms of  
17      internal affairs while there's a criminal  
18      investigation conducted. And then once the  
19      criminal investigation concludes, then the  
20      internal affairs administrative investigation  
21      starts. And my question is why? Why do you stop  
22      the process for the criminal investigation and  
23      then start it up again?

24      A.           I have legal advisors.

1 Q. Okay. Do you have an understanding of  
2 why?

3 A. Yeah. Generally we don't want to give  
4 the appearance that we've treated one of our own  
5 officers differently than we would a citizen by  
6 not investigating things criminally.

7 Q. Uh-huh.

8 A. So if we believe a theft occurred, then  
9 should we just say, well, they're an officer, we  
10 don't have to investigate it criminally. And so  
11 there's a lot of concern that the appearance of  
12 not doing a criminal investigation looks like we  
13 have a bias towards our officer and are treating  
14 them differently.

15 Q. Uh-huh.

16 A. I get that. And so I have agreed to do  
17 a number of investigations as a criminal  
18 investigation first. My preference is to do  
19 concurrent investigations if we're going to do a  
20 criminal investigation as well.

21 Q. Uh-huh.

22 A. But there are a lot of concerns about  
23 ordering a participant to speak, you know, a focus  
24 officer to speak because that could then give the

1 appearance that we've ordered them to talk and  
2 maybe criminal charges shouldn't be filed, you  
3 know, whether two investigations got mixed.

4 Q. Uh-huh.

5 A. And have violated their constitutional  
6 right for, you know, self-defense, you know.

7 Q. Okay.

8 A. And yet there are sometimes when we  
9 have moved forward administratively at the same  
10 time as a criminal investigation. We've been  
11 successful that way, so in general it's listening  
12 to either the legal advice or the advice of the  
13 director of public safety or someone else to  
14 proceed criminally first and then do the  
15 administrative so there is no mixing. We've had a  
16 number of challenges with regard to that. And  
17 obviously, you know, the delay in getting the  
18 administrative thing done means that they've been  
19 on our payroll longer. That officer that I  
20 referenced earlier, that investigation was  
21 conducted by the federal agencies for about three  
22 years, and the length of that criminal  
23 investigation was one of the reasons why I believe  
24 the arbitrator gave him his job back.

1 Q. That's Knode?

2 A. Yes.

3 Q. Okay. Is rank something that would be  
4 taken into account in terms of the seriousness of  
5 -- or not seriousness, but the degree of  
6 discipline issued for an offense?

7 A. Yes.

8 Q. How is rank taken into account?

9 A. I believe the supervisors have more  
10 training, more responsibility, sometimes more  
11 opportunity to be autonomous. Officers in general  
12 don't get to flex their hours, they don't get to,  
13 you know, be someplace else without a whole bunch  
14 of different approvals. So a supervisor taking  
15 advantage of that autonomy is certainly something  
16 that I consider as part of their outcome, the  
17 outcome of the disciplinary action.

18 Q. Okay. And because of that, it's a more  
19 -- if an officer and a sergeant or a lieutenant  
20 commit essentially the same offense, you would  
21 take it -- it would be more discipline most likely  
22 for the higher ranking officer?

23 A. It depends.

24 MR. COGLIANESE: Objection.

1 Q. I guess what I'm trying to get at is  
2 the answer you just gave when I asked how is rank  
3 taken into account is you're telling me the  
4 supervisors have more training and more  
5 responsibility, more autonomy. And so it's  
6 something you take into account in the outcome of  
7 the disciplinary action. I guess I -- if it's not  
8 to make the discipline -- is it to make the  
9 discipline less serious for a higher ranking  
10 officer?

11 MR. COGLIANESE: Objection.

12 A. It all depends on the facts of the  
13 cases. You know, was supervision at all related  
14 to that? I mean drunk driving has nothing to do  
15 with supervision.

16 Q. Okay.

17 A. So it's all based on the facts, what  
18 the charges are.

19 Q. Okay.

20 A. Very rarely I've ever seen a case have  
21 the same exact fact pattern.

22 Q. Of course.

23 A. Of a serious nature. A lot of people  
24 not wearing their hats, pretty similar.



1 Q. Right. Or shooting a hole in the wall  
2 of a substation?

3 A. Some of them are.

4 Q. I guess. I guess there could be  
5 multiple ways that happens?

6 A. Uh-huh.

7 Q. When rank is taken into account in  
8 discipline, it would be taken into account to make  
9 it a more serious offense for the higher ranking  
10 officer?

11 A. Potentially.

12 MR. COGLIANESE: Objection.

13 Q. Okay. I would not think that there  
14 would be a situation -- you can correct me if I'm  
15 wrong -- where a higher ranking officer would  
16 receive less discipline because of their higher  
17 rank?

18 MR. COGLIANESE: Objection. Go ahead.

19 A. I mean, you're talking about some  
20 theoretical that I don't have an example of. So,  
21 you know, even with an OVI case, I can see an  
22 officer that was driving recklessly and all that  
23 kind of thing getting more discipline than a  
24 sergeant that was, you know, asleep at a stop

1 sign.

2 Q. And I am asking you a hypothetical.

3 A. Yeah.

4 Q. I'm talking about all things being  
5 equal, if the offense has something to do with  
6 supervision let's say and there's a supervisor  
7 being disciplined rather than an officer, you  
8 would expect the supervisor to receive at least  
9 equal to but most likely more discipline than the  
10 patrol officer?

11 MR. COGLIANESE: Objection. Go ahead.

12 A. If all things are equal, then -- and it  
13 has to do with supervision, then, yes, I could say  
14 that that might be the case. But, again, I'm not  
15 going to give an absolute because I just don't  
16 have any facts.

17 Q. Okay. You mentioned burdens of proof,  
18 I guess in terms of whether you're sort of  
19 51 percent sure that the officer did it versus  
20 99 percent sure. How does that play into the  
21 discipline?

22 A. I take it into consideration as to how  
23 strong the evidence is.

24 Q. Okay. Is that in terms of how strong

1 the evidence is in your own mind or in terms of  
2 how you think an arbitrator is going to look at  
3 the strength of the evidence?

4 A. Mostly mine. But I certainly do  
5 consider at times whether or not I think that this  
6 is a case that an arbitrator could find. But, you  
7 know, like our burden of proof for administrative  
8 investigations is preponderance of the evidence.

9 Q. Uh-huh.

10 A. Some arbitrators just decide that they  
11 want clear and convincing.

12 Q. Uh-huh.

13 A. So I don't try to go with clear and  
14 convincing just knowing that some arbitrators do  
15 that because I don't know which arbitrator is  
16 going to have the case. And --

17 Q. True.

18 A. -- I don't know if that's the standard  
19 that they're going to use. So I relied mostly on  
20 my judgment because that's the one thing that I  
21 have control over.

22 Q. And if you feel convinced that an  
23 officer committed serious misconduct, would you  
24 rather recommend the serious discipline even if

1       you -- it might be overturned by the arbitrator,  
2       or would you rather issue discipline that you feel  
3       like is definitely going to hold up?

4                   MR. COGLIANESE:  Objection.  Go ahead.

5       A.           If I believe that the officer needs to  
6       have corrective action, I'm going to recommend  
7       corrective action.

8       Q.           Okay.  Even if there's a chance that an  
9       arbitrator might send it back?

10      A.           I don't recall ever making a decision  
11     not to discipline somebody because an arbitrator  
12     might negate that.

13      Q.           Okay.  How about what's the rule of the  
14     union?  And I know this is a general question, so  
15     let me explain it.

16                   But what's the role of the union in  
17     terms of that?  In terms of are there cases where  
18     the union is sort of more and less, you know,  
19     strenuously objecting to discipline for an  
20     officer, and if so does that get taken into  
21     account?

22                   MR. COGLIANESE:  Objection.  Go ahead.

23      A.           I think that I could say that, yes,  
24     there are times when I feel like they are

1 absolutely convinced that an officer is either  
2 innocent or shouldn't be disciplined at a certain  
3 level and they make their feelings known to me  
4 and/or others. And then there are other cases  
5 where I think that they understand that  
6 disciplinary action needs to take place, they're  
7 not fighting it so strenuously.

8 Q. Okay. And does that influence -- did  
9 that influence your disciplinary recommendations  
10 or is it just a background fact?

11 A. Well, I would say I certainly  
12 considered it. You know, in particular, you know,  
13 some of our police involved shooting situations,  
14 they were very, very, you know, strenuous about  
15 some of their recommendations or fighting for a  
16 particular officer. And I think they have been  
17 with some other officers as well. But it's just I  
18 consider everything.

19 Q. Uh-huh. Okay. So you're saying there  
20 are situations where you may have given lesser  
21 disciplinary recommendations because you felt the  
22 union was going to make a bigger issue of it?

23 MR. COGLIANESE: Objection. Go ahead.

24 A. Well, the union objecting to it or not

1 is sometimes coinciding with what I thought was  
2 the appropriate level of discipline. So I can't  
3 say that -- go ahead and repeat the question  
4 again.

5 Q. Are you saying there are situations  
6 where you may have given lesser disciplinary  
7 recommendations because you felt the union was  
8 going to make a bigger issue of it than other  
9 similar cases?

10 A. I would say I probably did take that  
11 into consideration, yes.

12 Q. Can you give me an example?

13 A. Well, like you brought up Doug Williams  
14 before. You know, I thought that his accidental  
15 discharge when he was wrestling around with a  
16 person and his gun was in his hand and he -- I  
17 mean, he came close to shooting this person. And  
18 an 8-hour suspension seemed to me that that's not  
19 nearly enough, but it was beyond a written  
20 reprimand which was the standard, and I thought,  
21 well, at least I get my foot in the door with an  
22 8-hour suspension. And so I thought, yes, indeed  
23 they were going to object to that, and so I didn't  
24 go higher than an 8-hour suspension but I did go

1 with the 8-hour suspension.

2 Q. Okay.

3 A. So I would say that's probably an  
4 example of where I knew that the union was going  
5 to object, I still did what I thought was at least  
6 somewhat appropriate if -- you know, it might have  
7 been harsher, but I thought that that at least  
8 made a statement.

9 Q. So the Doug Williams case was an  
10 example where you gave lesser discipline than you  
11 really wanted to because you felt the union would  
12 make an issue of it if you did more?

13 MR. COGLIANESE: Objection. Go ahead.

14 A. I just can't say, you know, what else I  
15 would have done.

16 Q. Okay.

17 A. I --

18 Q. I mean, just my understanding of the  
19 Doug Williams case is that was by far the most  
20 discipline that had ever been given to an officer  
21 for an accidental discharge?

22 A. I think at that time.

23 Q. Okay. And in fact there had been many  
24 prior cases involving accidental discharges in

1       which the officers got a written reprimand?

2       A.           Correct.

3       Q.           Including some cases where the  
4       discharge was near a civilian or during a scuffle  
5       with a civilian?

6       A.           I don't know those cases. This was one  
7       that came up while I was chief. So I don't know  
8       all of the different accidental discharges  
9       circumstances, but I do know that this one  
10      concerned me.

11      Q.           Okay. Did you take into account what  
12      you described earlier in terms of your sort of  
13      assessment of Sergeant Williams' reputation or  
14      trustworthiness?

15      A.           That wasn't about trustworthiness.  
16      That was about the circumstances that he -- even  
17      as a supervisor -- I mean, in the videotape that  
18      we had, we saw an officer that actually took  
19      control of the situation and handled his own  
20      weapon properly and Sergeant Williams did not. So  
21      I took into consideration his status as a  
22      supervisor, his tenure. But I didn't -- it wasn't  
23      a matter of trustworthiness at that point in time.

24      Q.           Okay. Going back to the status of the



1 supervisor thing, in addition to supervisors sort  
2 of greater degree of autonomy and training and  
3 that sort of thing, is it fair to say that it's  
4 important for supervisors to set an example for  
5 lower ranking officers than be held to a higher  
6 standard of conduct in general?

7 MR. COGLIANESE: Objection. Go ahead.

8 A. I believe it's extremely important for  
9 supervisors to lead by example.

10 Q. Okay.

11 A. The higher standard is not something  
12 that is codified. You know, I think all police  
13 officers should be held to a higher standard.  
14 And, you know, there are situations that apply  
15 just to supervisors for their behavior, so if  
16 that's a higher standard, then I guess that  
17 certainly applies. But it doesn't say the same  
18 circumstances that they'll be treated differently  
19 for everything, you know.

20 Q. Okay. But just taking the example you  
21 gave about wearing your hat.

22 A. Uh-huh.

23 Q. Assuming the supervisor is in a  
24 position where they're required to wear their hat.

1 If a supervisor's sort of flouting the rules about  
2 hat wearing, that may be taken more seriously than  
3 for a patrol officer because the supervisor is  
4 sort of demonstrating to the lower ranking  
5 officers that they don't have to follow the rules  
6 since my supervisor is not following the rules?

7 MR. COGLIANESE: Objection. Go ahead.

8 A. Are you asking if it's taken more  
9 seriously by me?

10 Q. Yeah.

11 A. I don't consider hat violations to be  
12 extremely important.

13 Q. Okay.

14 A. Chief Jackson did.

15 Q. Okay.

16 A. And I don't believe that he insisted  
17 that different levels of disciplinary action were  
18 taken for supervisors as opposed to officers on a  
19 regular basis. It might have been on an  
20 intermittent or, you know, indeterminant basis.  
21 But I'm not aware of what his policy was on  
22 wearing the hat.

23 Certainly I think that if a supervisor  
24 is not wearing a hat, that it would be hard for

1       them to expect their officers to always wear their  
2       hat and that leading by example thing. But I  
3       don't think that it would necessarily result in  
4       different discipline. It's a DCC generally, and I  
5       don't get involved in those decisions.

6       Q.            Sure.

7       A.            I didn't get involved. I keep talking  
8       as if this is the present, and I am not the chief  
9       anymore.

10      Q.            Uh-huh. You mentioned -- actually I  
11      think it was when you were talking about drunk  
12      driving, you mentioned the role of the division's  
13      public image?

14      A.            Uh-huh.

15      Q.            Is the division's public image  
16      something that would be taken into account in  
17      terms of handing out discipline?

18      A.            Yes, indeed.

19      Q.            Okay. So things that officers do that  
20      are more likely to cause the division public  
21      humiliation or embarrassment would be taken more  
22      seriously?

23      A.            I don't know about more seriously. You  
24      know, it --

1 Q. It might?

2 A. It's a factor in whether or not that  
3 rule is used and, you know, there are other things  
4 that never come to anybody's attention that are  
5 extremely serious.

6 Q. Uh-huh.

7 A. So I don't know about the more  
8 seriously.

9 Q. And again for each of these factors I'm  
10 really talking about all other things being equal,  
11 if it's something that's embarrassing to the  
12 division, it might result in more discipline?

13 MR. COGLIANESE: Objection. Go ahead.

14 A. Because there's a rule of conduct that  
15 says that you should not bring disrepute, then,  
16 yes, they're taught the potential is there.

17 Q. Okay. How about the degree of harm to  
18 the public, is that taken into account in  
19 discipline, harm or potential harm to the public?

20 A. I'm not sure what you mean by "harm."

21 Q. Things that are dangerous to members of  
22 the public or cause the public financial harm, are  
23 those taken more seriously than things that don't?

24 A. Sure.

1 Q. Are things that are physically  
2 dangerous to officers and civilians taken more  
3 seriously than things that aren't?

4 A. Can you give me an example?

5 Q. I think the example you used was that  
6 the accidental discharge near a civilian might be  
7 taken more seriously than one that happens in the  
8 wall at the -- against the wall of a substation  
9 for instance?

10 A. Absolutely.

11 Q. Okay. Things that might cause somebody  
12 physical harm would generally be taken more  
13 seriously than things that are, you know, strictly  
14 an internal financial issue?

15 A. No. It depends.

16 Q. No. Can you explain?

17 A. The best example that I could give is a  
18 use of force --

19 Q. Okay.

20 A. -- that is outside of policy. A use of  
21 force that's outside of the policy is often done  
22 in the heat of the moment, split second decision  
23 making is going on, you know, the officer is in a  
24 volatile situation, might sense that there's some

1 danger and act inappropriately. I take all that  
2 into consideration. But somebody that  
3 purposefully, you know, violates --

4 Q. Steals property?

5 A. -- our rules, steals property, violates  
6 our rules, not necessarily harm to the public and  
7 maybe it doesn't come to the attention of the  
8 public. But I consider it to be deceitful,  
9 purposeful, and -- you know, whereas the officer's  
10 behavior is -- oftentimes may be negligent or  
11 reckless, not purposeful. So their own  
12 culpability is extremely important. And I can't  
13 say that the use of force is more serious than the  
14 other.

15 Q. Okay. What about a purposeful use of  
16 force against a civilian, intentionally doing  
17 something without cause versus intentionally  
18 stealing a piece of property from the division?

19 MR. COGLIANESE: Objection. Go ahead.

20 A. It all depends on the facts and what  
21 the situation is.

22 Q. Okay. There's no division rule that a  
23 use of force against a civilian is a less serious  
24 offense than a theft of property for instance?

1       There's no blanket rule like that?

2       A.           No.

3       Q.           Okay. Exposing the division to  
4       potential legal liability, does that make an  
5       offense more serious in terms of discipline  
6       potentially?

7                   MR. COGLIANESE: Objection. Go ahead.

8       A.           I mean, I can't say that it doesn't.  
9       But, you know, an officer does an illegal search,  
10      you expose the city to, you know, legal liability,  
11      you know, financially. But you go back to, you  
12      know, what was their mental state, you know, what  
13      was their purpose, all that kind of stuff. And so  
14      there are -- certainly the potential is there if  
15      they expose the city to something. But, you know,  
16      officers fail to control at a stop sign and get in  
17      a car accident and cost the city tens of thousands  
18      of dollars and they still get a DCC for, you know,  
19      perhaps their driving. So it -- it's not one  
20      thing.

21      Q.           Okay. And that applies even violations  
22      of peoples' constitutional or civil rights may be  
23      dealt with less seriously than things that don't?

24      A.           Depending --

1 MR. COGLIANESE: Objection.

2 A. -- on the circumstances.

3 Q. Okay.

4 MR. GITTES: Can we take a break?

5 MR. VARDARO: Can we wait a minute?

6 MR. GITTES: Sure. Yeah. Okay.

7 BY MR. VARDARO:

8 Q. I think you were getting at this  
9 before. But certainly if the offense involves the  
10 honesty and integrity of the officer, that would  
11 be dealt with more seriously than something that  
12 doesn't?

13 MR. COGLIANESE: Objection.

14 Q. All other things being equal?

15 MR. COGLIANESE: Objection. Go ahead.

16 A. It depends on what that's all about. I  
17 mean --

18 Q. Okay. Well, we'll get back into that  
19 in a second. Let's take 5 minutes?

20 (A short recess is taken.)

21 BY MR. VARDARO:

22 Q. Chief Jacobs, before we went on break,  
23 I was asking you about disciplinary infractions or  
24 misconduct that implicates the honesty and



1 integrity of the officer involved.

2 A. Yes.

3 Q. And I guess you gave me -- you said  
4 that -- whether that factors into the level of  
5 discipline depends on what it's all about. I  
6 guess what I'm asking is if misconduct that an  
7 officer commits is dishonest or intentionally  
8 untruthful, that's more serious than conduct that  
9 isn't dishonest or untruthful, right?

10 MR. COGLIANESE: Objection. Go ahead.

11 A. I would say in general, yes.

12 Q. Well, I'm asking all these questions  
13 I'm asking you in general. I mean, obviously  
14 we're going to talk about some specific things.

15 A. Okay.

16 Q. So the factors that I've heard you say  
17 in terms of what you took into account at the time  
18 you were chief for the level of discipline were  
19 the level of evidence in the case, how much  
20 evidence there was?

21 A. Yes.

22 Q. Whether there were comparable prior  
23 cases?

24 A. Yes.

1 Q. Whether the officer accepted  
2 responsibility for their actions?

3 A. Yes.

4 Q. And just in terms of that one, that's  
5 sort of related to what we were just talking about  
6 in terms of honesty and integrity, if the officer  
7 has basically admitted that they did the thing  
8 wrong versus continuing to claim that they didn't,  
9 you take that into account?

10 A. I would say yes in general.

11 Q. Okay. If the officer when they were  
12 asked, the officer said I didn't do it and then it  
13 turned out that they actually -- you could prove  
14 100 percent they did do it, they would be charged  
15 with untruthfulness on top of the other charges,  
16 right?

17 MR. COGLIANESE: Objection. Go ahead.

18 A. That depends.

19 Q. I mean, if it's proven that the officer  
20 was untruthful?

21 A. If it was proven --

22 MR. COGLIANESE: Objection.

23 A. -- that the officer was untruthful,  
24 yes. That would certainly be a consideration.

1 Q. Okay.

2 A. But sometimes they can deny something  
3 and still not be in their mind's eye lying because  
4 they believe it to be otherwise.

5 Q. Okay. If the officer had a good -- the  
6 other factors you've listed, the officer's prior  
7 history in the department, their history of  
8 service?

9 A. What's the question?

10 Q. Whether that was a factor in the  
11 discipline?

12 A. Yes.

13 Q. Their past disciplinary acts or  
14 disciplinary history?

15 A. Correct.

16 Q. The burden of proof for that particular  
17 type of discipline, whether it preponderance or  
18 clear and convincing?

19 MR. COGLIANESE: Objection.

20 A. Well, I don't --

21 Q. Well, you said that was something you  
22 didn't really take into account, your standard was  
23 preponderance, some arbitrators applied higher  
24 standards?

1 A. The city's level of proof needed to  
2 sustain the charges is a preponderance of the  
3 evidence. In the cases that I saw, it ranged from  
4 51 percent to 100 percent.

5 Q. Okay. So if you're absolutely certain  
6 that the officer conducted the misconduct, they're  
7 likely to get a higher level of discipline than if  
8 you were just pretty sure that they did it?

9 MR. COGLIANESE: Objection.

10 A. Not necessarily.

11 Q. Okay. So what did you mean when you --  
12 when you were talking about how sure you were that  
13 they did the misconduct being a factor in  
14 discipline?

15 A. Well, it depends on what the charges  
16 are. I mean, you know, I could be -- I could be  
17 preponderance of the evidence and 100 percent sure  
18 and still give the same level of discipline,  
19 depending on what the comparables were and what --  
20 everything else was involved.

21 Q. I'm going by the list that you gave us  
22 in terms that you said the level of evidence, the  
23 level of proof was a factor in terms of how  
24 serious the disciplinary --

1 A. I said it was one of the considerations  
2 that I take into --

3 Q. Well, how would it be a consideration?

4 A. If I felt that -- I have to decide. I  
5 think if it's 51 percent preponderance of the  
6 evidence and then if I am very convinced then I'm  
7 very convinced.

8 Q. Okay.

9 A. It's a consideration that I --

10 Q. And how does that play into the level  
11 of discipline that's handed out?

12 MR. COGLIANESE: Objection.

13 A. I can't give you a hypothetical answer  
14 without knowing what the facts are.

15 Q. I guess I want to make sure you  
16 understand what I'm asking you. What I'm asking  
17 you is once you've decided you're going to sustain  
18 a departmental charge against an officer, my  
19 question was about the factors that would be taken  
20 into account in terms of what level of discipline  
21 is given, whether they're terminated, whether  
22 they're suspended, how long a suspension, whether  
23 it's a reprimand or suspension, those kind of  
24 things. You mentioned in response to that whether

1       it's 51 percent or 100 percent being a factor in  
2       those things. And I guess I'm trying to figure  
3       out in what direction? I mean, I think it's a  
4       pretty basic question. If you're more sure,  
5       you're more likely to give a higher level of  
6       discipline; is that accurate?

7                   MR. COGLIANESE: Objection.

8       A.           I would say that that can happen, yes.

9       Q.           Okay. You mentioned the level of  
10       discipline needed to achieve the corrective  
11       action?

12       A.           I did.

13       Q.           What does that mean?

14       A.           Do I think that this is an appropriate  
15       level to prevent future similar conduct from  
16       occurring.

17       Q.           Okay. You mentioned the risk of  
18       arbitration, and I think we talked about that,  
19       that's another factor, but maybe not one that you  
20       took particularly strongly into account?

21                   MR. COGLIANESE: Objection.

22       A.           I considered it always. Well, not  
23       always, I guess. But I certainly considered it at  
24       times and took it into consideration. I mean, I

1 typically would discuss the outcome of a hearing  
2 with the people that were present outside of the  
3 FOP and then the focus officer and say what do you  
4 think, and sometimes that would come up and  
5 sometimes it wouldn't.

6 Q. Okay. You mentioned a tenure of the  
7 officer, that's one of the -- that was another  
8 factor?

9 A. Yes.

10 Q. The level of training the officer  
11 received was a factor?

12 A. Yes.

13 Q. Whether the conduct was criminal or not  
14 with a conviction?

15 A. I don't know that I distinguished it  
16 being a conviction. Certainly that goes into the  
17 charges that might come in and then that could add  
18 on. But it could be a totally administrative  
19 case, not criminal and still be very serious.

20 Q. Okay. But if the officer committed a  
21 crime, that would be factored into the discipline?

22 A. Yes.

23 MR. COGLIANESE: Objection.

24 Q. The officer's rank is a factor?

1 A. Yes.

2 Q. The level of public embarrassment is a  
3 factor?

4 A. Yes.

5 Q. And whether there's harm to the public  
6 or the division is a factor?

7 A. Yes.

8 Q. And whether the conduct was intentional  
9 or just reckless or negligent is a factor?

10 A. Their culpability was a consideration.

11 Q. Okay.

12 A. Their known culpability.

13 Q. Okay. Other than those I think  
14 probably 14 or 15 different things that I just  
15 mentioned, any other factors generally that you  
16 can think of in terms of how serious the  
17 discipline handed out would be?

18 A. I don't think we talked about  
19 aggravating circumstances, you know.

20 Q. Yeah. Let's talk about them.

21 A. There's mitigating and aggravating  
22 circumstances.

23 Q. Are there other things that aren't on  
24 that list that would be aggravated or mitigating



1 circumstances?

2 A. I described earlier the mitigating for  
3 an officer using unnecessary force, you know, a  
4 volatile situation, you know, thinking that this  
5 was necessary but it really wasn't or whatever,  
6 that's a mitigating circumstance. Aggravating is  
7 where you've plotted, where you've, you know,  
8 purposefully done something that you actually knew  
9 what you were doing and continued to do it, so  
10 that's an aggravating circumstance. Aggravating  
11 on an OVI. You know, one thing is to, you know,  
12 fall asleep at the wheel with the car running,  
13 stopped at a stop sign. Another one would be to  
14 maybe flee and not pull over right away and to,  
15 you know, fight with the arresting officer or to  
16 give them a hard time or try to get out of the  
17 situation by saying you're a cop. Those would be  
18 aggravating circumstances.

19 Q. Okay. But a lot of that seems like  
20 it's bound up in the last factor that we talked  
21 about which is about whether the misconduct is  
22 purposeful or intentional or premeditated versus  
23 whether it's reckless or negligent.

24 A. It's related to it.

1 Q. Okay.

2 A. But not exclusively.

3 Q. Okay. Are there other mitigating  
4 factors that you haven't already mentioned?

5 MR. COGLIANESE: Objection.

6 A. I can't think of any other examples  
7 right now.

8 Q. Okay. How about other aggravating  
9 factors?

10 MR. COGLIANESE: Objection.

11 A. I can't think of anything specific.

12 Q. Okay. How about just sort of how you  
13 value the officer in terms of their value to the  
14 department, is that something you take into  
15 account?

16 A. Yeah. I suppose if that's a judgment  
17 that I feel comfortable making, you know. I don't  
18 always know, and I certainly can't predict, but  
19 you know if I believe that the corrective action  
20 is one in which is probably going to change  
21 behavior and that person can continue to be a  
22 productive police officer, whereas the corrective  
23 action isn't going to change anything and they  
24 might consider or might continue to be a problem,

1 then that might be a factor that I can take into  
2 consideration. It might not be anything that I  
3 can do anything about, though.

4 Q. Okay.

5 A. Yeah. Or accurately assess.

6 Q. Okay. Any other factors that we  
7 haven't talked about that you can think of in  
8 general that you would have taken into account?

9 A. Not right offhand.

10 Q. Okay. I want to talk obviously about  
11 the Kevin Morgan investigation that resulted in  
12 his termination. Fair to say the general time  
13 frame we're talking about is 2013 to 2015; does  
14 that sound right to you?

15 A. Yes.

16 Q. Okay. In particular the misconduct he  
17 was alleged to have committed happened in 2013, he  
18 was terminated in 2015, and the investigation in  
19 various forms went on in between those times?

20 A. Correct.

21 Q. Okay. What was the first thing that  
22 you heard about it when -- like when in the  
23 process would you have heard about it?

24 A. I don't recall specifically. I

1 sometimes was informed of the initiation of  
2 investigations and sometimes I wasn't. I would  
3 assume this one was shortly after it initiated  
4 because he was relieved of duty. And in general I  
5 was advised of those kinds of circumstances and/or  
6 why.

7 Q. Okay. Typically there would be a  
8 routing sheet at least that would go up to you, to  
9 your level when somebody was relieved of duty?

10 A. Not necessarily, no.

11 Q. Okay.

12 A. But, you know, whether it was a routing  
13 sheet or somebody verbally told me, in general I  
14 was advised of serious allegations and relief of  
15 duties.

16 Q. Okay. Do you have any independent  
17 recollection of what the first thing you would  
18 have heard about Kevin Morgan's case was?

19 A. Along the lines of working special duty  
20 employment and I think it referred to his double  
21 dipping. But, you know, basically getting paid  
22 for being two places at the same time, which  
23 obviously shouldn't happen.

24 Q. What was your involvement in the

1 investigation as it was going on?

2 A. I don't recall any specific --

3 Q. Okay. Commander --

4 A. -- involvement.

5 Q. Commander Jennifer Knight was in charge  
6 of internal affairs during this time period. Does  
7 that sound right?

8 A. I don't know the dates of her tenure  
9 there.

10 Q. Okay.

11 A. I had at least four different internal  
12 affairs commanders in seven years, so I don't know  
13 what the tenure of hers was.

14 Q. Commander Knight, do you remember  
15 Commander Knight keeping you generally informed  
16 and updated about this investigation?

17 A. She may have.

18 Q. Okay. Do you remember having any  
19 discussions with Ray Meister the sergeant  
20 investigating Kevin Morgan?

21 A. I don't remember any specific  
22 conversation that I had with him. He might have  
23 been at the hearing --

24 Q. Okay.

1 A. -- ultimately and we might have talked  
2 then. But I don't remember during the pendency of  
3 the case.

4 Q. Okay. Having reviewed the  
5 investigative summary in the last -- you said you  
6 reviewed it in the last week or so?

7 A. Uh-huh.

8 Q. Sorry. You have to say yes.

9 A. Yes.

10 Q. You also remember Ken Decker was  
11 involved in the investigation?

12 A. I believe he was one of the IA  
13 sergeants that helped with some interviews.

14 Q. Okay. Did you have any involvement in  
15 assigning Sergeant Decker to assist Sergeant  
16 Meister or was that completely within internal  
17 affairs?

18 A. Not to my knowledge.

19 Q. Okay. Do you have any understanding of  
20 why Sergeant Decker was assisting Sergeant Meister  
21 with the investigation?

22 A. No.

23 Q. Okay. Did you have discussions at  
24 executive staff meetings about the progress of

1       this case as it was going on?

2       A.           I would assume we did. I generally  
3       tried to be kept apprised of relief of duty  
4       status. And if we're doing a criminal  
5       investigation, then I would have asked to be kept  
6       advised of what was the status of the criminal  
7       investigation.

8       Q.           Okay. What would be the general nature  
9       of those status reports or --

10      A.           Where does it stand, you know, what's  
11      going on, do we have anything new, do we have any,  
12      you know, reason to put him back to work or not.  
13      You know, general questioning about where the  
14      investigation stood.

15      Q.           Okay. I want to talk -- I want to jump  
16      back for a second and talk in general about what  
17      is -- when Officer Morgan was relieved of duty,  
18      which was shortly after this investigation  
19      started --

20      A.           Uh-huh.

21      Q.           -- he was assigned to something called  
22      580. What does that mean when an officer is  
23      relieved of duty and assigned to 580?

24      A.           They're relieved of their badge and gun

1 and told not to perform any police duties,  
2 activities. And then 580 is the patrol  
3 administrative office, and they find work for our  
4 personnel there to answer the phones, to help  
5 people coming into the office find things, do  
6 things, they organize and distribute subpoenas,  
7 basically whatever work the patrol administrative  
8 sergeant feels needs to be done during that shift.

9 Q. Okay. How many officers are typically  
10 on relieved of duty status at one time and  
11 assigned a 580?

12 A. It fluctuates.

13 Q. Okay. What's the range?

14 A. As far as being relieved of duty,  
15 probably one or two because everybody knew during  
16 my tenure that I tried to minimize the number of  
17 people that were, you know, relief of duty status.  
18 It was something that I purposefully tried to  
19 shorten the time in a relief of duty status if  
20 possible.

21 Q. Why?

22 A. Because if the officer could still do  
23 some work that we trusted could be done in the  
24 right way and it wasn't a termination case, then



1       they could go back to work and wait out the  
2       pendency. But if you are facing a termination  
3       case, if it's about untruthfulness, if it's about  
4       I don't trust you to do the job in the way that  
5       needs to be done, then you would generally stay  
6       off. I didn't always get involved in all of those  
7       decisions. But the ones that came to my  
8       attention, I tried to monitor the status of.  
9       Certainly something the union had complained about  
10      and I told them and did make some changes to  
11      monitor how long people were in a relief of duty  
12      status so that we weren't neglecting to pay  
13      attention to that status.

14      Q.           Okay. For officers relieved of duty,  
15      the sergeant had a fair amount of discretion in  
16      terms of what they were actually doing?

17      A.           The patrol administrative sergeant?

18      Q.           Yes.

19      A.           As far as I know, yes.

20      Q.           Okay. I mean they could be located in  
21      various different places within the 580 office?  
22      They could be doing various different kinds of  
23      what I would call make work duties?

24      A.           Well, there was always work to be done.

1 I worked there for four years as a sergeant and  
2 there was always work to be done. But if you had  
3 10 people, then I suppose you might have to find  
4 something for them to do.

5 Q. Okay.

6 A. But, yeah, I -- I mean I didn't tell  
7 the sergeant to tell them what to make them do if  
8 that's what you mean.

9 Q. I mean during this time period that  
10 we're talking about, I mean Officer Morgan was in  
11 580 from roughly November 2013 until September  
12 1st, 2015 when he was terminated. So almost two  
13 years, right? That sounds right?

14 A. That sounds like an almost two-year  
15 period of time.

16 Q. Okay. And during the same period of  
17 time Bronson Constable was in 580 for almost that  
18 whole period of time if not longer?

19 A. I don't know what the dates for  
20 sergeant was.

21 Q. Okay. But it was the same general time  
22 frame that the Constable Jones investigation was  
23 going on?

24 A. You have that information. I don't

1 have it in front of me.

2 Q. Okay. My understanding was you just  
3 reviewed this?

4 MR. COGLIANESE: Objection.

5 Q. A whole list of these cases?

6 A. Didn't have that kind of information in  
7 it.

8 Q. Okay. No time frames?

9 A. I don't have one for him.

10 Q. Okay. The Constable and Jones were in  
11 580 during the pendency of their investigation  
12 though, right?

13 A. I don't recall.

14 Q. Okay. You don't remember whether they  
15 were or not?

16 A. I don't know where they were assigned.  
17 I don't know how long they may have been relieved  
18 of duty.

19 Q. Okay. How about officer -- we  
20 mentioned Officer Kirby before when he was under  
21 investigation. Was he relieved of duty?

22 A. Potentially.

23 Q. Okay. There was an officer -- was  
24 officer -- along with -- well, you don't know that

1 one, okay.

2 There's an Officer Randall Lyons who  
3 was relieved of duty during this time frame. Does  
4 that ring a bell?

5 A. Yes.

6 Q. Okay.

7 A. I don't know what time frame it was.  
8 But I know that he was relieved of duty because he  
9 was disciplined for time problems while he was  
10 relieved of duty.

11 Q. Right. So we're talking -- I mean,  
12 assuming that I'm correct that all of those  
13 officers were investigated during this time frame  
14 and all of those officers were relieved of duty  
15 during the investigation we're talking about, at  
16 least five or six officers assigned in 580 during  
17 that time frame?

18 A. What's the question?

19 Q. I'm just asking you whether you agree  
20 that that's -- that would be an unusually large  
21 number of officers to be assigned to 580 at the  
22 same time --

23 MR. COGLIANESE: Objection. Go ahead.

24 Q. -- based on what you told me.

1 A. I can't say unusual or not because I  
2 don't keep track of the numbers or --

3 Q. You said it would usually be one or  
4 two?

5 A. That's my guess.

6 Q. Okay. And this was probably three  
7 times that many during this --

8 MR. COGLIANESE: Objection.

9 A. Okay.

10 Q. -- during this two-year time frame.

11 MR. COGLIANESE: Objection.

12 A. Okay.

13 Q. So that's more?

14 A. Okay.

15 MR. COGLIANESE: Objection.

16 Q. All right. Aside from -- well, who do  
17 you consider -- who did you consider at the time  
18 to be your executive staff, was it just the deputy  
19 chiefs or were there other people?

20 A. General -- executive staff is the six  
21 deputy chiefs and the public standards bureau  
22 commander.

23 Q. Okay.

24 A. That's how we describe executive staff.

1 Q. Okay. So aside from talking about the  
2 status of Officer Morgan's case with your  
3 executive staff, did you have discussions -- and  
4 potentially with whoever the commander of internal  
5 affairs was, did you have conversations with  
6 anybody else about Officer Morgan's case as it was  
7 going on?

8 A. I would assume that I had conversations  
9 with the internal affairs commander. My immediate  
10 staff sat in on executive staff meetings, so they  
11 might have been present when that was discussed.

12 Q. Okay. Who was that?

13 A. My secretary, Tina Hundley. I don't  
14 know which sergeant I had back then. It might  
15 have been Sergeant Wellday.

16 Q. When you say which sergeant you had,  
17 what do you mean? What role did that person play?

18 A. My aide.

19 Q. Oh, you had an aide, a sergeant who was  
20 just your aide?

21 A. Yes. And he was in my office when I  
22 became chief, but he left I can't remember what  
23 year it was.

24 Q. Okay. How about Lieutenant Irwin or

1 Lieutenant Lokai, did you have discussions with  
2 either of them as the Morgan investigation was  
3 proceeding?

4 A. I don't recall.

5 Q. Okay. Would that have been typical?

6 A. Not generally.

7 Q. Okay.

8 A. Not during the investigation.

9 Q. Because you would usually go through  
10 the commander of ESB rather than the lieutenants?

11 MR. COGLIANESE: Objection.

12 A. Well, the PSB commander sat in  
13 executive staff.

14 Q. But the lieutenant did not?

15 A. Correct.

16 Q. Okay.

17 A. And they would -- they would get  
18 involved in the case as it was wrapping up.

19 Q. Okay. Basically at the point when it  
20 was time to determine whether there would be  
21 departmental charges and then during the hearing  
22 process?

23 A. I asked the PSB lieutenants to review  
24 investigations for just cause and to -- and for

1 the deputy chiefs. And then if they believe there  
2 was just cause, then they would talk to the deputy  
3 chief about a recommendation that they could make  
4 to me about whether it's critical -- of a critical  
5 nature and whether or not it should be a written  
6 reprimand or departmental charges.

7 Q. Okay. But that would usually be the  
8 first involvement of professional standards is  
9 after the internal affairs summary is complete?

10 A. From my point of view, I don't know  
11 what other people reach out to them for.

12 Q. Okay.

13 A. And they may.

14 Q. There's a person named Jeff Furbee?

15 A. He's the city attorney's office legal  
16 advisor to the division police.

17 Q. Okay. What was the role of Mr. Furbee  
18 in termination of an investigation process?

19 MR. COGLIANESE: And I am going to  
20 instruct you not to answer as to any questions you  
21 had with Mr. Furbee.

22 Q. Okay. And I am not asking you the --  
23 necessarily the content of conversations, but just  
24 whether or not you would have had conversations



1 with him during this investigation?

2 A. Because this was a criminal  
3 investigation, I would say that that might very  
4 well have occurred.

5 Q. Okay. How about once the criminal  
6 investigation was over?

7 A. Not that I recall.

8 Q. Okay. Once the internal affairs  
9 investigation had concluded, what was your role at  
10 that point? Did you -- well, first of all, let me  
11 ask, did you read the internal affairs summary  
12 once it was completed at the time?

13 A. To the best of my recollection.

14 Q. Okay. That would have been typical of  
15 your --

16 A. Correct.

17 Q. Sorry. You answered before I could  
18 even think of the word I was going to use.

19 A. My method.

20 Q. Your methods. You would particularly  
21 in a case where termination was a possibility, you  
22 would certainly read the internal affairs summary?

23 A. Correct.

24 Q. And the interviews, the interview

1 transcripts?

2 A. Are you asking if I read them?

3 Q. Yeah.

4 A. I don't recall.

5 Q. You don't remember whether you read  
6 Kevin Morgan's interviews in this case?

7 A. I don't recall.

8 Q. Okay.

9 A. I'm not saying I didn't. I just don't  
10 recall specifically reading them.

11 Q. Okay. It's possible that you  
12 recommended his termination as an officer without  
13 reading his internal affairs interview?

14 A. I mean it's certainly possible.

15 Q. Okay.

16 A. I don't know that it's probable, but --

17 Q. Okay. You just don't remember one way  
18 or the other though?

19 A. Correct.

20 Q. Okay. Do you remember whether you  
21 listened to any recordings of interviews?

22 A. I don't recall.

23 Q. Okay. Was it typical of your process  
24 to listen to recordings of internal affairs

1 reviews?

2 A. I would say it's not typical.

3 Q. Okay. Did you have any questions once  
4 you read the summary where you asked for any  
5 follow-up investigation or further work by the  
6 investigators?

7 A. Not that I recall.

8 Q. Okay. Did you review a draft of the  
9 internal affairs summary before it was submitted  
10 or just the final version?

11 A. I don't recall reviewing a draft.

12 Q. Okay. Was it typical to see a draft or  
13 not?

14 A. No.

15 Q. Okay. Once you got the internal  
16 affairs investigative summary, who did you discuss  
17 it with?

18 A. I don't recall specifically. I can  
19 only say what I would typically do, and that's to  
20 talk to the discipline grievance lieutenants, the  
21 deputy chief that made the ruling.

22 Q. In this case that was Deputy Chief  
23 Kuebler, does that sound right?

24 A. You know more than I do on that.

1 Q. Okay. So you don't remember  
2 discussions with Deputy Chief Kuebler about this  
3 particular --

4 A. Nothing specific. Not at this time,  
5 no.

6 Q. Okay. Who else? Besides the -- when  
7 you say the disciplinary and grievance  
8 lieutenants, you're talking about the lieutenants  
9 in professional standards --

10 A. I don't remember --

11 Q. You don't remember?

12 A. -- if they were the ones that dealt  
13 with this case or not.

14 Q. Do you remember any discussions with  
15 Irwin or Jeff Lokai about this case?

16 A. I don't remember any specific  
17 conversations, no.

18 Q. Okay. Besides the disciplinary  
19 grievance lieutenants and the deputy chief, who  
20 would you typically discuss an internal affairs  
21 investigation with once it was complete?

22 A. Once it was complete, typically not  
23 very many other people. Once I had made the  
24 decision, had a departmental charges hearing then

1 as I said before, often whoever came to the  
2 hearing I would talk to after the hearing itself.

3 Q. Okay. Prior to the hearing, did you  
4 have any discussions with anyone from the FOP  
5 about this case?

6 A. I don't recall.

7 Q. Would you typically?

8 A. I don't know that "typical" is the  
9 right way to describe it.

10 Q. Okay.

11 A. But certainly there were some  
12 incidental conversations that we had at times  
13 bumping into each other in the hallway or there  
14 for a grievance hearing and they say, hey, can I  
15 talk to you afterwards. But I don't recall any  
16 specific conversation about this particular case,  
17 but it could have happened.

18 Q. Okay. Who would you typically talk to  
19 from the FOP along those lines?

20 A. Generally would have been either the  
21 grievance chairman or one of the assistant  
22 grievance representatives.

23 Q. Okay. Who would those have been at the  
24 time?

1       A.           Or the president of the union,  
2       depending on, you know, who's there.

3       Q.           Who was the president at that point?

4       A.           In 2000 what?

5       Q.           2015 roughly, early 2015?

6       A.           I'm not sure if Jason was in there then  
7       or not.

8       Q.           Jason Pappus?

9       A.           Yeah. Jim Gilbert was the union  
10      president when I became chief in 2012. I don't  
11      remember when he left.

12      Q.           Okay. But you don't remember any  
13      particular conversations with the union about this  
14      case?

15      A.           Nothing specific, no.

16      Q.           Okay. How about with the safety  
17      director's office, did you give them a heads up  
18      that a case might be coming to them or anything  
19      like that?

20      A.           I wouldn't generally do that. I did  
21      occasionally, but that happened more so after  
22      Mayor Ginther came into office, which was 2016,  
23      because he wanted to be advised, and I had monthly  
24      meetings with him.

1 Q. Okay.

2 A. I had some occasional meetings with  
3 Mayor Coleman, but not maybe as regularly.

4 Q. So you had monthly meetings with the  
5 Mayor, not necessarily the safety director would  
6 be in the meetings or what?

7 A. Most of the time, yes.

8 Q. Okay.

9 A. And they were called monthly meetings,  
10 but they didn't happen every month.

11 Q. Okay. There's a notation -- well, I'll  
12 just show it to you.

13 MR. VARDARO: Do you have the exhibits,  
14 previous exhibits?

15 THE REPORTER: Give me one second.

16 (A short recess is taken.)

17 BY MR. VARDARO:

18 Q. I'm handing you what's been previously  
19 marked as Plaintiff's Exhibit 1, which is the  
20 internal affairs summary for Kevin Morgan,  
21 including a cover sheet at the top. This is what  
22 you reviewed last week?

23 A. Yep.

24 Q. Okay.

1 A. Well, I don't -- I don't recall that I  
2 saw --

3 Q. The cover sheet?

4 A. Yeah.

5 Q. It would have started with just the  
6 report?

7 A. I think I -- I don't remember seeing  
8 this, but --

9 Q. Okay. You've seen it at some point,  
10 though?

11 A. Yeah.

12 Q. Okay. If you look at the first page,  
13 the cover sheet --

14 A. Uh-huh.

15 Q. -- there's a notation right above the  
16 exhibit sticker --

17 A. Yep.

18 Q. -- about "Allegation II: Officer  
19 Morgan accepted payment for special duty shifts he  
20 did not work."

21 A. Correct.

22 Q. There's a list of charges that are  
23 typed in from internal affairs.

24 A. Yes.



1 Q. And then there's the deputy chief's  
2 determination which is sustained. And the  
3 corrective action says, "Departmental charge."  
4 And then there's a notation under there that's  
5 handwritten that says, "plus ROC 1.04 per chief."  
6 And is that your initials?

7 A. Yes.

8 Q. Did you write that?

9 A. It looks like my handwriting.

10 Q. Okay. What's ROC 1.04?

11 A. Rule of conduct 104.

12 Q. Yeah. What is that rule of conduct?

13 A. Cause for dismissal, I believe.

14 Q. Okay. Do you recall why you wrote in  
15 cause for dismissal?

16 A. Because I wanted to add that charge.

17 Q. Okay. Why?

18 A. Because I thought it was appropriate.

19 Q. Why?

20 A. Because I thought that the behavior was  
21 something that couldn't be tolerated. That meant  
22 that it was strong enough behavior done with  
23 enough culpability to warrant termination.

24 Q. Okay. And the second page, the back of

1       that same sheet you wrote the same thing in for  
2       Allegation III?

3       A.           Correct.

4       Q.           Which was, "accepted full payment for  
5       special duty jobs when he failed to work the full  
6       shift, due to arriving late...or leaving...early."  
7       So same answer, that's why you wrote that in?

8       A.           Yes.

9       Q.           Okay. In order to reach a decision to  
10      terminate Kevin Morgan, he didn't need to be  
11      charged with Rule of Conduct 1.04, right?

12     A.           Correct.

13     Q.           And officers have been terminated  
14     certainly in the past without being charged with  
15     Rule of Conduct 1.04?

16     A.           Is that a question?

17     Q.           Yeah. I'm asking you.

18     A.           Yes.

19     Q.           Okay. Do you recall other cases where  
20     you handwrote in 1.04 on a charging sheet like  
21     this?

22     A.           Not specifically, no.

23     Q.           Okay. Do you think you did it in any  
24     other cases while you were chief?

1           A.           I believe that I did it in the Randy  
2           Mayhew case.

3           Q.           What's the Randy Mayhew case?

4           A.           He was charged with violating our rules  
5           with regard to -- I believe that he solicited  
6           prostitutes for sex for money while he was on  
7           duty, and I believe that I added that charge. I  
8           don't know if I wrote it on this particular sheet.  
9           But this particular rule of conduct is not  
10          something that is, like, listed as an allegation  
11          by internal affairs typically. They investigate  
12          the allegation and then they try to determine what  
13          rule violations occurred, but they don't generally  
14          look at is this cause for dismissal. That's  
15          something that comes from my perspective.

16          Q.           Okay. Other than the Randy Mayhew  
17          case, can you think of any other ones where you  
18          added it?

19          A.           I believe that there are probably  
20          others, I just don't recall what they are.

21          Q.           Okay.

22          A.           I just was testifying last week about  
23          Randy Mayhew, that's why I remember it.

24          Q.           Okay. I'll come back to that.

1           You recall that in this case there was  
2 a criminal investigation prior to the  
3 administrative investigation?

4           A.           In the Kevin Morgan case, yes.

5           Q.           Yes.

6                       And the determination of the criminal  
7 investigation was that criminal charges would not  
8 be filed?

9           A.           Correct.

10          Q.           Okay. And in particular the prosecutor  
11 was Jeff Blake. I don't know if you -- if that's  
12 listed.

13          A.           I remember seeing that name in the  
14 investigation summary.

15          Q.           Yes. You knew that the prosecutor told  
16 internal affairs there were several reasons why  
17 prosecution would not be pursued in the case?

18          A.           I believe there were more than one,  
19 yeah.

20          Q.           Okay. And the reasons included the  
21 property manager, the company that was involved in  
22 the apartment complex didn't want to pursue  
23 criminal charges?

24          A.           Because she didn't want to have to go

1 to court and testify, yeah.

2 Q. The property manager said in the  
3 criminal investigation that she actually wanted  
4 the officers who were working security at the  
5 apartment complex to vary their hours so that the  
6 people who were around the apartment complex would  
7 sort of be on their toes?

8 A. I believe that was one of the listed  
9 reasons.

10 Q. Okay. And that because of that and  
11 because of Officer Morgan's likely explanation  
12 that he was working alternative hours to the ones  
13 that he was assigned, that it would be difficult  
14 to prove the case?

15 MR. COGLIANESE: Objection.

16 A. I don't know the specific words used,  
17 but --

18 Q. That was the gist of it, though?

19 A. Yeah. I'll take your gist.

20 Q. Okay. In the internal affairs summary,  
21 do you remember that Sergeant Meister who wrote  
22 the summary indicated that the only reasons that  
23 Officer Morgan was not criminally prosecuted for  
24 the charge of theft in office was because the

1 property manager didn't want to prosecute and  
2 because he himself had not given an interview?

3 A. I think that what Meister listed was  
4 different than what Jeff Blake was quoted as.

5 Q. Okay.

6 A. But it was in the investigative  
7 summary.

8 Q. Okay. But the investigative summary --  
9 I mean, the fact that what he listed was different  
10 than what the prosecutor himself had listed in  
11 terms of why he wasn't prosecuted, was that a  
12 concern for you?

13 A. Well, the information from Jeff Blake  
14 was in there, so it wasn't like an omission there.  
15 I -- it wasn't a concern of mine with regard to my  
16 decision on the outcome of the disciplinary case.  
17 If it was a concern of mine with regard to how  
18 well he did an investigative summary and justified  
19 his own thing, that's usually not something that I  
20 dwelled on because that -- or the sergeant has a  
21 lieutenant, a commander to address deficiencies if  
22 there are any in the way that they summarize a  
23 case.

24 Q. Did it suggest to you any problems with

1 the objectivity of the investigation?

2 A. It did not give me any concerns that  
3 affected the evidence. I didn't -- you know, it  
4 didn't strike me, no, as, oh, I can't trust what  
5 Sergeant Meister has said because he left out a  
6 couple of things here in his own.

7 Q. Uh-huh.

8 A. Because I have said for many, many,  
9 many years that, you know, you don't have to  
10 repeat information to justify your own stance. If  
11 it's already spelled out, then it's all there.

12 Q. Uh-huh.

13 A. If it had been an omission, then that  
14 would be, you know, more concerning. But I don't  
15 always go down the path of, well, they left that  
16 out, therefore they're not objective. Because if  
17 it's already stated someplace else, I don't always  
18 expect them to repeat that.

19 Q. Okay. Did you follow up with anybody  
20 when you realized in reviewing this that he had  
21 overstated the criminal case against Officer  
22 Morgan that he needed to be -- you know, that  
23 Sergeant Meister needed to understand that this  
24 was not something that should be done?

1 A. I don't recall that.

2 MR. COGLIANESE: Objection.

3 Q. Okay. Because you don't recall it, do  
4 you think it didn't happen or do you just -- you  
5 don't remember one way or another whether you gave  
6 any feedback on the investigative summary?

7 MR. COGLIANESE: Objection.

8 A. I don't recall. I don't recall giving  
9 any feedback.

10 Q. Okay. But does that mean that you  
11 think that you didn't give any feedback?

12 A. I don't -- I can't speculate as to  
13 that.

14 Q. Okay. You just don't remember?

15 A. Correct.

16 Q. Okay. Do you have any recollection of  
17 why Officer Morgan remained relieved of duty after  
18 the prosecution was refused?

19 A. Because I still viewed it as a  
20 potential termination case.

21 Q. Okay. Do you recall about this  
22 investigation that Officer Morgan's basic  
23 explanation was that he had worked his -- the  
24 hours that he was -- the number of hours he was



1       supposed to work on the job but he didn't do it on  
2       the days that he was expected to do them?

3       A.           I recall that that was part of his  
4       explanation, yes.

5       Q.           Okay. If you had believed that that's  
6       what he was actually doing, would you still have  
7       viewed it as a termination case?

8               MR. COGLIANESE: Objection. Go ahead.

9       A.           That wasn't the facts.

10      Q.           Okay. I mean you didn't believe that,  
11      that was your -- your termination decision was  
12      based on the premise that Officer Morgan was not  
13      actually working the number of hours he was  
14      supposed to work?

15      A.           Correct.

16      Q.           Not just that he was not working the  
17      days he was supposed to work?

18      A.           Correct.

19      Q.           If it was just a matter of he was  
20      switching days without proper authorization, that  
21      would not have risen to the level of termination?

22               MR. COGLIANESE: Objection. Go ahead.

23      A.           That's a possibility.

24      Q.           Okay. There's some possibility that he

1 would have been terminated just for working on  
2 Tuesdays instead of Wednesdays or Thursdays  
3 instead of Tuesdays or something like that?

4 MR. COGLIANESE: Objection. Go ahead.

5 A. It depends on the responses that he  
6 would have given and various other factors that  
7 might have played out differently had he had some  
8 proof of that or other evidence. He had some  
9 evidence, but then he had no evidence of some of  
10 the other stuff that seemed like there's, you  
11 know, a reason why there's no evidence because he  
12 didn't have the evidence. So it's still  
13 theoretical.

14 Q. I guess I don't really understand what  
15 you're telling me. So you're saying that there's  
16 some scenario, some hypothetical scenario where  
17 Officer Morgan could have been terminated even if  
18 he had worked all the hours he was supposed to  
19 work just because he worked them on different  
20 days?

21 A. Are you saying if there's evidence of  
22 that?

23 Q. Yeah. Well, let's say that he  
24 convinced you that he actually was -- you know, he

1 was supposed to work Wednesdays, but he worked  
2 Sundays instead, same number of hours. Didn't get  
3 any money that he didn't earn, just shifted days  
4 without authorization. Is there a scenario where  
5 that still would have resulted in his termination?

6 MR. COGLIANESE: Objection. Go ahead.

7 A. Based on just -- just that, and that he  
8 wasn't actually getting paid for not working and I  
9 had proof of that and was convinced that that was  
10 the case, then that -- yeah, that's a possibility  
11 that he might have been, you know, given  
12 corrective action that wouldn't have resulted in  
13 termination.

14 Q. The bottom line conclusion of Sergeant  
15 Meister's internal affairs summary was that he  
16 couldn't confirm or disprove that Officer Morgan  
17 was working other days than the ones that he was  
18 assigned; isn't that right?

19 MR. COGLIANESE: Objection. Go ahead.

20 A. I don't recall that I read all of his  
21 -- his explanation. But I don't believe that  
22 there was any evidence to confirm or to deny that  
23 he hadn't switched his days because there wasn't  
24 any evidence.

1 Q. Okay. I'm just asking in terms of  
2 Sergeant Meister's report, his basic conclusion  
3 was Morgan says that he was working other days  
4 than the ones that he was assigned and he worked  
5 all of his hours. I can't -- I can't prove that,  
6 I can't disprove that.

7 MR. COGLIANESE: Objection.

8 Q. That's basically the gist of his  
9 report.

10 MR. COGLIANESE: Objection.

11 A. I -- I don't recall what he --

12 Q. Okay.

13 A. How he described it.

14 Q. Can you take a look?

15 A. I can read it.

16 Q. In Exhibit 1 there's the investigative  
17 summary is paginated at the top of every page.  
18 Can you take a look at page 62 of his report. And  
19 on the -- I think it's about -- well, I'll find  
20 it.

21 A. The last paragraph.

22 Q. The last paragraph says, "Most of  
23 Officer Morgan's claims regarding dates and times  
24 he allegedly worked could not be confirmed or

1 proven false." Do you see that?

2 A. Yes, I do.

3 Q. That's consistent -- I mean, that's  
4 what's in Sergeant Meister's report is most of  
5 these situations he just didn't have proof one way  
6 or the other?

7 MR. COGLIANESE: Objection.

8 A. The sentence says, "Most of Officer  
9 Morgan's claims regarding dates and times he  
10 allegedly worked could not be confirmed or proven  
11 false."

12 Q. Okay. That's consistent with your  
13 understanding at the time?

14 A. Yeah.

15 Q. Okay. I mean, you didn't read that  
16 last week and you were like, oh, I didn't remember  
17 that?

18 A. Correct.

19 Q. And the basic problem in the  
20 investigation was there were documents that  
21 basically confirmed that he wasn't there on  
22 Wednesdays from 9:00 p.m. until 1:00 a.m., which  
23 was the expectation?

24 A. Documents?

1 Q. There were -- you know, like, there was  
2 certain times when he was working at a Giant Eagle  
3 supermarket during some portion of that particular  
4 shift?

5 A. Yes.

6 Q. So there was -- you know, you could  
7 essentially prove he wasn't there on Wednesdays  
8 from 9:00 until 1:00 a.m.?

9 A. The proof was strong --

10 Q. Yeah.

11 A. -- that there were definitely  
12 Wednesday --

13 Q. And he -- and Officer Morgan was  
14 admitting --

15 MR. COGLIANESE: Go ahead.

16 Q. I'm sorry. Go ahead.

17 MR. COGLIANESE: If you would like to  
18 finish your answer, go ahead. Don't let Jeff cut  
19 you off.

20 A. There was definitely proof that he was  
21 not working from 9:00 p.m. until 1:00 a.m. on  
22 Wednesday nights on a number of occasions.

23 Q. Okay. And it wasn't even really  
24 disputed. I mean Officer Morgan was not saying,

1       yes, I was there every Wednesday from 9:00 p.m.  
2       until 1:00 a.m.?

3       A.           His explanation was that, yes, he had  
4       changed his shifts.

5       Q.           Right. But you didn't have  
6       documentation confirming every time he did that?

7       A.           Correct.

8       Q.           Okay.

9       A.           He did not submit any.

10      Q.           Right. And there was -- Officer  
11      Roberts, Tony Roberts was the coordinator, the  
12      special duty coordinator for this assignment, the  
13      Stratford Lakes assignment?

14      A.           That is correct.

15      Q.           And he had some calendars showing when  
16      the officers were supposed to be there and  
17      sometimes when they had switched their shift, but  
18      even he did not keep those calendars during the  
19      entire period of this investigation?

20      A.           That's what I recall.

21      Q.           And even the ones that he did -- and  
22      that was because in fact the property manager had  
23      actually asked him to stop submitting calendars at  
24      a certain point because it was just paperwork she

1       didn't need?

2       A.               I recall reading that.

3       Q.               And then even for the period of time  
4       when Officer Roberts did keep and submit the  
5       calendar, some of them were not accurate to his  
6       own records because Officer Morgan was informing  
7       him I'm switching to a different day because of  
8       some conflict and Officer Roberts acknowledged  
9       that he got those communications but he didn't  
10      actually change it on the calendar?

11      A.               Yes.

12      Q.               Do you remember that?

13      A.               Because they are postdated basically  
14      and he didn't go back and correct dates that had  
15      previously occurred.

16      Q.               Okay. But he acknowledged, Officer  
17      Roberts acknowledged that he had some calendars  
18      that weren't even accurate to the times that  
19      Officer Morgan told him?

20      A.               I believe so.

21      Q.               Okay. Do you remember whether there  
22      was any effort to review for comparison sake  
23      Officer Roberts' time and marking in service logs  
24      for this assignment?



1 A. I do not.

2 Q. Or anybody else's?

3 A. I don't recall.

4 Q. Okay. Did you ask for them to do that?

5 A. Not that I recall.

6 Q. Okay. I mean it was clear from your  
7 review of this investigation that the timekeeping  
8 for this job was pretty haphazard?

9 MR. COGLIANESE: Objection. Go ahead.

10 A. The timekeeping --

11 Q. By this --

12 A. -- by whom?

13 Q. By Officer Roberts, by Officer Morgan,  
14 by the property manager?

15 A. I don't know whose responsibility  
16 you're referring to as far as timekeeping. I  
17 mean, obviously there was some notation going in  
18 as an invoice that said pay him for Wednesday from  
19 9:00 to 1:00.

20 Q. And even sometimes the invoices were  
21 submitted by a different officer than the person  
22 who actually submitted -- who actually --

23 A. I don't recall.

24 Q. -- did the work?

1 A. I don't recall that fact.

2 Q. Okay. Would you dispute it?

3 A. No.

4 Q. Okay. Do you disagree with the  
5 assertion that basically the timekeeping in  
6 general for this job was pretty haphazard?

7 MR. COGLIANESE: Objection. Go ahead.

8 A. Maybe some aspects of it. But I mean I  
9 -- I mean, that's a generalization for every --  
10 every particular person. And he was getting paid,  
11 so that part of it wasn't haphazard.

12 Q. Okay. Do you remember that there was  
13 actually an issue in terms of getting paid for  
14 this job, that sometimes it would be delayed  
15 significantly? The apartment complex was not  
16 doing a particularly great job of paying the --  
17 paying timely?

18 A. I don't recall that fact.

19 Q. Okay. But you wouldn't dispute it?

20 A. No.

21 Q. Okay. As a general matter when an  
22 allegation against an officer can't be proven or  
23 disproven based on documents and the officer  
24 denies the misconduct, isn't it the division's

1 practice to mark those -- to conclude those  
2 allegations as not sustained?

3 MR. COGLIANESE: Objection. Go ahead.

4 A. The definition for not sustained is  
5 when it can't be proven or disproven.

6 Q. So that's a yes?

7 A. Well, you asked about the division.  
8 And many, many people have different opinions  
9 about the same evidence. So the division has a  
10 guidance on what would amount to a not sustained  
11 and that is the guidance.

12 Q. Okay. So when an allegation can't be  
13 proven or disproven based on documents and the  
14 officer denies a charge, that would fit within the  
15 guidance of not sustained?

16 MR. COGLIANESE: Objection. Go ahead.

17 A. Yes. With that being that it's a  
18 person's opinion not the division. You know, the  
19 division has guidance to give to people who read  
20 an investigation and decide whether they believe  
21 that that's the case.

22 Q. Okay. Besides the guidance, it's the  
23 practice of the -- when you were the chief it was  
24 the practice of the chain of command that when

1       their opinion was that the documents didn't prove  
2       or disprove the allegation and the officer was  
3       denying the charge, they would conclude that as  
4       not sustained?

5                   MR. COGLIANESE:  Objection.  Go ahead.

6       A.           If their opinion was that it couldn't  
7       be proven or disproven, then that was what they  
8       should write down.

9       Q.           Okay.  That included you?

10      A.           Yeah.

11      Q.           Okay.  Given that there were no  
12      documents proving or disproving Officer Morgan's  
13      claim that he was switching days, another way to  
14      confirm whether or not he was telling the truth  
15      about that would be to talk to eyewitnesss, right?

16      A.           Yes.

17      Q.           Okay.  Do you remember that in this  
18      investigation Officer Morgan actually presented  
19      several potential witnesses, some of them by name,  
20      some of them by just sort of identifying  
21      information who might be able to prove that he was  
22      working this job on days other than the ones he  
23      was assigned?

24      A.           I only recall one.  But I --

1 Q. Okay.

2 A. I know that he gave reference to, hey,  
3 I talked to people, I, you know -- I checked them  
4 out. But I don't remember anything other than one  
5 specific name, and that was a person that he had a  
6 relationship with.

7 Q. Okay. But that's the security officer  
8 from the Kroger?

9 A. I believe that's where he worked.

10 Q. Do you remember what the relationship  
11 was?

12 A. I think he served as a mentor or friend  
13 or something along those lines to this particular  
14 security guard.

15 Q. What was the significance to you of the  
16 fact that he had a relationship with him?

17 A. That they might have talked about, you  
18 know, do you ever remember seeing me. And  
19 sometimes when you have these kinds of  
20 conversations, it leads people to believe that  
21 that might be what they actually experienced. The  
22 research that I've done on memory and recollection  
23 says that, you know, people can be easily  
24 influenced by having a conversation about

1       particulars and prompting people to remember  
2       something and might not actually have occurred,  
3       but it's a consideration.

4       Q.           So it's something that would lessen the  
5       weight of that witness's recollection?

6       A.           It has the potential to lessen that  
7       weight.

8       Q.           Okay. Do you recall that in that --  
9       first of all, do you remember what the -- what  
10      that was all about, the security guard's --

11      A.           I just recall that the security guard  
12      saw him working in October of 2013 on a particular  
13      date that I don't -- I don't believe was a  
14      scheduled work date for Officer Morgan.

15      Q.           Right. And that would corroborate  
16      Officer Morgan's recollection or claim that he was  
17      working other days than the ones that he was  
18      assigned?

19                   MR. COGLIANESE: Objection. Go ahead.

20      A.           One day.

21      Q.           Okay. Do you remember that in Officer  
22      Morgan's interview he indicated that the security  
23      officer had records confirming the incident that  
24      he was talking about?

1 MR. COGLIANESE: Objection. Go ahead.

2 A. Not specifically, but --

3 Q. Okay.

4 A. -- I mean, it could very well be in  
5 there.

6 Q. Okay. Do you remember that he  
7 described the incident in terms of basically that  
8 the Kroger officer had called him for help with a  
9 potential theft at the Kroger and that he was able  
10 to help because he was at the Stratford Lakes  
11 complex?

12 A. That sounds familiar.

13 Q. Okay. And do you remember reading in  
14 the summary that Sergeant Meister had actually  
15 followed up with the security officer and the  
16 security officer had confirmed what Officer Morgan  
17 was --

18 A. I believe so.

19 Q. -- reporting? And he confirmed the  
20 particular day?

21 A. Could be.

22 Q. Okay. Nothing in the internal affairs  
23 summary as I've reviewed it indicates any effort  
24 to get the records that Officer Morgan described.

1 Does that -- do you remember that?

2 MR. COGLIANESE: Objection. Go ahead.

3 A. No, not particularly.

4 Q. Okay. Would you have expected internal  
5 affairs to try to find the records if there were  
6 any?

7 A. If it was something that -- yeah, if  
8 the sergeant felt like it got confirmed and there  
9 wasn't any reason not to, then he could have just  
10 put it in there and says sounds -- sounds good,  
11 you know.

12 Q. Okay.

13 A. If he had enough information to say  
14 that, yeah, that particular day, you know, I  
15 agree. You know, there's one of those things  
16 where we've already talked about the pendency of  
17 this case taking a long time and does that delay  
18 it another week, another month, you know, two  
19 months? So choices have to be made. So I can't  
20 give you a blanket answer that, yeah, you know,  
21 you should get those records, but if it's going to  
22 take another six months, then no, you shouldn't  
23 get those records.

24 Q. Okay. I'm handing you what's



1 previously been marked as Plaintiff's 15, which  
2 I'll represent to you is the second part of Kevin  
3 Morgan's investigative interviews with internal  
4 affairs. He was interviewed on two different  
5 dates. This contains interview material from the  
6 second date.

7 A. Okay.

8 Q. And I'm going to direct you -- there's  
9 actually -- there's numbers at the bottom of each  
10 page and there's numbers at the top of each page.

11 A. Okay.

12 Q. And the pagination at the top is a  
13 little bit hard to follow only because there were  
14 two parts of his investigation that -- of his  
15 interview that day. They interviewed him for such  
16 a long period of time that they ran out of tape  
17 and then they had to start another interview.

18 A. Okay.

19 Q. So the first 100 pages of that are  
20 paginated and then there's a second set of pages.  
21 So if you could turn to page 100 of the first  
22 part.

23 A. At the top?

24 Q. And then find the start of the second

1 part, basically. At the top, yes.

2 A. Okay. Is this it?

3 Q. So then you're -- if you can find the  
4 first page of the next part and then flip from  
5 there to page 5 at the top, which I believe is 153  
6 at the bottom.

7 A. Yes.

8 Q. Okay. I'll flip with you. Can you  
9 take a look at -- the very bottom of the page  
10 Officer Morgan says, "I know I worked on the  
11 13th." Do you see that part?

12 A. Yes.

13 Q. Okay. Can you read from there and then  
14 through the next couple pages to the bottom of  
15 155, which is page 7 at the top. And just tell me  
16 when you are ready to answer questions about that.

17 A. How far did you want me to read?

18 Q. I think you're past it.

19 A. Okay.

20 Q. This confirms that Officer Morgan  
21 stated to the investigating officers that he  
22 believed Kyle DeGoey, the security officer, had  
23 records if his company that showed that this  
24 incident occurred as described?

1 MR. COGLIANESE: Objection. Go ahead.

2 Q. The bottom of 154. Says he's got  
3 records from the security company or the security  
4 company has records.

5 A. Officer Morgan said that the company  
6 would have documentation for the security guard's  
7 records I guess.

8 Q. Okay.

9 A. He didn't say that he -- that the  
10 security company would have documentation of his  
11 behavior, I don't --

12 Q. Okay.

13 A. I don't believe. But --

14 Q. At least highlighted that there might  
15 be some documentation that they could look at?

16 A. Correct. Correct.

17 Q. Okay. And you knew that Sergeant  
18 Meister followed up with Corporal DeGoey?

19 A. That was in the investigative summary.

20 Q. Yeah. I mean, he conducted an  
21 interview with DeGoey and had an audio file for  
22 that interview. Do you recall whether you  
23 listened to the audio?

24 A. I do not recall.

1 Q. Okay. It was clear from the  
2 investigative summary -- well, first of all,  
3 there's nothing in the investigative summary, I  
4 think we covered, that has any documentation from  
5 the security company or from DeGoey?

6 MR. COGLIANESE: Objection. Go ahead.

7 A. Is that a question?

8 Q. Yeah. I'm asking you. Did you mean --  
9 well, let me put it this way: When you reviewed  
10 the investigative summary last week and probably  
11 at the time, did you -- what was your impression  
12 of the interview of DeGoey?

13 A. I believe that there was an example  
14 that Officer Morgan had probably worked on a  
15 different date than the date that he was  
16 scheduled.

17 Q. Okay. And that date occurred prior to  
18 any suspicion being raised about him not working  
19 his assigned hours?

20 MR. COGLIANESE: Objection.

21 Q. And it occurred a couple weeks before  
22 any report --

23 A. I can't say when anybody else had  
24 suspicions but before it was brought to our

1 attention.

2 Q. Okay. And to your knowledge before it  
3 was brought to Officer Morgan's attention that  
4 anybody suspected this?

5 A. I don't know.

6 Q. Okay. I mean, at the very beginning of  
7 the investigative summary, if you look at  
8 Exhibit 1, page -- well, I don't -- we can go back  
9 and confirm the dates. But taking my word for a  
10 moment that October 13th was prior to any report  
11 being made to the department, that Officer Morgan  
12 wasn't there when he was supposed to be?

13 A. I don't recall when the property  
14 manager let Officer Roberts know. But I believe  
15 that there had been some conversation as early as  
16 September that Officer Roberts had with Officer  
17 Morgan, but I can't recall specifically what that  
18 was about. But I could be wrong.

19 Q. Okay.

20 A. I think it's in there.

21 Q. But assuming for the moment that  
22 Officer Morgan had not been confronted about not  
23 being where he was supposed to be when he was --

24 A. By whom?

1 Q. By anybody.

2 A. I don't know when he was confronted.

3 Q. Okay. I'm asking you to make an  
4 assumption with me for a second just for the  
5 purpose of the question.

6 A. What kind of an assumption do you want  
7 me to make?

8 Q. Do you know what an assumption is?

9 MR. COGLIANESE: Objection. Come on,  
10 Jeff.

11 MR. VARDARO: Well, Rich, I'm sorry.  
12 You're here sighing deeply, and Chief Jacobs is  
13 sitting here saying, well, what do you want me to  
14 assume, what do you want me to assume?

15 Q. I'm asking you to assume for the moment  
16 for the purpose of the question that October 13th  
17 was prior to Officer Morgan being accused of or  
18 suspected or confronted about the idea that he was  
19 not working the hours that he was supposed to  
20 work. Can you assume that for the moment?

21 A. Well, it certainly could be an  
22 assumption, but I don't have any proof that it --  
23 he wasn't --

24 Q. That's not my question.

1 A. -- notified by --

2 Q. I'm just asking you to make the  
3 assumption.

4 A. -- anybody before that.

5 Q. Can you make the assumption for me?

6 A. I thought I mentioned earlier that I  
7 thought he had had a conversation with Officer  
8 Roberts in September or something like that. I'm  
9 not sure what I'm recollecting, but I -- I just  
10 don't know. So, yeah, I mean, I can make an  
11 assumption, but I'm not going to say that it's  
12 foolproof.

13 Q. Okay. I'm just asking you to make the  
14 assumption.

15 A. Okay.

16 Q. And that's the premise for the  
17 question.

18 A. Okay.

19 Q. Okay. Assuming that was the case and  
20 there was an example confirming that Officer  
21 Morgan was working a different day than the one he  
22 was assigned, wouldn't that make it more likely  
23 that he was telling the truth about his practice  
24 of working different days to make up the hours

1       that he wasn't working on Wednesdays?

2               MR. COGLIANESE:  Objection.

3       A.           It corroborates one example.

4       Q.           Okay.  Doesn't corroborating that one  
5       example prior to the suspicion being raised to  
6       Officer Morgan make it more likely that he was  
7       telling the truth in general?

8               MR. COGLIANESE:  Objection.

9       A.           Not necessarily.  It corroborates one  
10      example.  He could have made it up about every  
11      other time but knew that he had one corroborating  
12      example.  I don't know.  I mean, I certainly  
13      considered that that was corroborated.

14      Q.           Okay.  Did you know that Corporal  
15      DeGoey also indicated that he had seen Officer  
16      Morgan on other dates, he couldn't name the dates,  
17      but he had seen him at other times that were not  
18      Wednesdays during this time frame?

19      A.           If it was in the investigation, I would  
20      have --

21      Q.           Well, I'll say it's not in the  
22      investigative summary.  I'm asking you whether you  
23      knew that other than from reading the  
24      investigative summary?



1 A. Not that I recall.

2 Q. Okay. Assuming that DeGoey had told  
3 that to Sergeant Meister, would you have expected  
4 it to appear in the summary?

5 MR. COGLIANESE: Objection.

6 A. Potentially if -- if there were other  
7 dates, yes.

8 Q. If DeGoey had offered or indicated to  
9 Sergeant Meister that he had his own documentation  
10 confirming that this incident occurred, would you  
11 have expected that to appear in the summary?

12 A. On the 13th?

13 MR. COGLIANESE: Objection.

14 Q. Yes.

15 A. It could have been added, yeah,  
16 certainly.

17 Q. Okay. I mean, the -- if he said it and  
18 it wasn't added, would that raise a concern in  
19 your mind about the nature of the summary?

20 A. Well, I already told you that, you  
21 know, if it was a readily available document,  
22 then, yeah. But I'm not going to wait another  
23 month or so just to get a document if there's no  
24 reason to believe that it's not accurate.

1 Q. Okay. But in this case there was a  
2 reason to believe that it might not be accurate,  
3 right? You told me the reason which was the prior  
4 relationship and the conversation?

5 MR. COGLIANESE: Objection.

6 A. I don't think that there was much  
7 dispute about whether or not that particular  
8 incident was true.

9 Q. Okay. So you took it as a given that  
10 this one happened as described?

11 A. Well, at least on that date, yeah.

12 Q. Okay. Can you take a look at page 15  
13 of Exhibit 1, the investigative summary? Page 15  
14 of the investigative summary?

15 A. Number 15 at the top?

16 Q. Yeah.

17 A. Okay.

18 Q. If you could just read the  
19 investigative summary of DeGoey's interview. It  
20 starts in the middle of page 15 and goes onto the  
21 next page.

22 A. Okay.

23 Q. If you could assume for a moment that  
24 in Sergeant Meister's conversation with Corporal

1 DeGoey, Corporal DeGoey actually volunteered to  
2 Sergeant Meister that he had a prior relationship  
3 with Officer Morgan, and they had had a recent  
4 conversation about this incident, and that it  
5 wasn't in response to Sergeant Meister asking him  
6 how he remembered things with such vivid detail.  
7 Would you agree with me that this investigative  
8 summary is not accurate?

9 MR. COGLIANESE: Objection.

10 A. I'm not sure I understand the question.

11 Q. In his actual interview with Corporal  
12 DeGoey, it was Corporal DeGoey that mentioned  
13 first that he had talked to Kevin Morgan about  
14 this incident recently and that they had a prior  
15 relationship through their church. But in the  
16 investigative summary, Sergeant Meister describes  
17 it as if he -- the investigator was puzzled as to  
18 how Corporal DeGoey remembered this with such  
19 vivid detail, and it was only then that he  
20 mentioned this conversation with Officer Morgan  
21 and their prior relationship. And I am asking  
22 you: Assuming the version that I just told you is  
23 true, that makes this investigative summary  
24 inaccurate?

1 MR. COGLIANESE: Objection.

2 A. I don't know that it makes it  
3 inaccurate. He could have followed up with a  
4 question and still accurately wrote down that he  
5 asked him how he remembered.

6 Q. Okay. But if he didn't do that, that  
7 would make this inaccurate?

8 MR. COGLIANESE: Objection.

9 A. He didn't do what?

10 Q. Ask him how he remembered this with  
11 such vivid detail?

12 A. Well, yeah, if he didn't ask him a  
13 question about it, then that would be inaccurate.

14 Q. Okay. Assuming that Corporal DeGoey  
15 told -- well, first of all, assuming Corporal  
16 DeGoey told Sergeant Meister that the reason he  
17 could remember this so vividly was because he was  
18 sending text messages about the incident as it was  
19 happening and he had them on his phone, would you  
20 have expected that to go into this summary?

21 A. That would have been beneficial.

22 Q. And it would have made the summary  
23 pretty different in terms of its tone?

24 MR. COGLIANESE: Objection.

1           A.           Tone? I didn't get the impression that  
2           the sergeant disbelieved this date.

3           Q.           Okay.

4           A.           So --

5           Q.           Okay.

6           A.           It could have been phrased differently,  
7           certainly, yes.

8           Q.           Okay.

9           A.           But I didn't read from this that he was  
10          disbelieving the corporal about that particular  
11          one because he said that was the date that he  
12          could testify to and it didn't sound as if he was  
13          disputing that.

14          Q.           Okay. In response to the question  
15          about whether he had testified about any other  
16          specific dates if Corporal DeGoey told Sergeant  
17          Meister that his hours at Kroger were Fridays and  
18          Sundays during this time period and that he  
19          remembered Officer Morgan coming in on multiple  
20          occasions to the Kroger and using the bathroom or  
21          getting coffee or something like that, considering  
22          that Officer Morgan was only assigned to Stratford  
23          Lakes on Wednesdays, would you have expected that  
24          information to go into this summary?

1 MR. COGLIANESE: Objection.

2 A. Certainly it could have been explored  
3 more. I also know that Officer Morgan was working  
4 at another special duty location and/or two.

5 Q. Uh-huh.

6 A. So I don't know that Corporal DeGoey  
7 would have clarified with him, hey, are you  
8 working at Stratford tonight or Briar Hill tonight  
9 or Giant Eagle tonight? So I don't know that him  
10 saying that I saw him on a Friday or what did you  
11 say, Sunday?

12 Q. Sunday.

13 A. Necessarily proved that he was working  
14 at a place that he said he was --

15 Q. Uh-huh.

16 A. -- in his own testimony, so --

17 Q. I mean you remember the Kroger was  
18 across the street from Stratford Lakes?

19 A. Okay.

20 Q. I'll represent to you that Kroger was  
21 across the street from Stratford Lakes. If  
22 Corporal DeGoey said the reason why he called  
23 Officer Morgan on this particular occasion was  
24 that he had seen him on prior nights at the Kroger

1 and that Officer Morgan had recognized them from  
2 their past acquaintance at the church and told  
3 him, hey, I'm working across the street on this  
4 special duty assignment, would you have expected  
5 that to go into the summary?

6 MR. COGLIANESE: Objection. Go ahead.

7 A. I think that you have to decide what  
8 should be in a summary or not. And I go back to I  
9 don't take from here that he was disputing that  
10 particular date and time. If he felt that it was  
11 relevant, he should have put it in.

12 Q. I mean, it would have been relevant,  
13 right? It would be further corroboration --

14 A. Potentially, yes.

15 Q. -- of Officer Morgan's basic exact  
16 defense to these charges, which was he was  
17 regularly working different hours than the ones he  
18 was assigned on a repeated basis?

19 A. It could have, yes.

20 Q. And considering that there was no  
21 documentation one way or the other about the vast  
22 majority of the instances involved, having an  
23 eyewitness who saw him on multiple occasions at a  
24 location right by the special duty assignment

1 would have been pretty important corroboration of  
2 Officer Morgan's account?

3 A. It would have been --

4 MR. COGLIANESE: Objection.

5 A. -- more information.

6 Q. Okay.

7 A. Yeah.

8 Q. And it would be important because  
9 that's basically the only information that Officer  
10 Morgan would have had to offer?

11 MR. COGLIANESE: Objection.

12 A. Well, he could have had other  
13 information.

14 Q. Yeah. He could have done a better job  
15 of documenting --

16 A. Correct.

17 Q. -- his time for sure?

18 A. Correct.

19 Q. There's no -- I don't think anybody  
20 disputes that. I think even Officer Morgan said  
21 it to you in his chief's hearing.

22 A. Correct.

23 Q. But if there was an eyewitness who  
24 said, oh, yeah, I saw him on a pretty regular



1 basis at a location that made it pretty likely  
2 that he was working the special duty assignment  
3 and it wasn't on Wednesdays, that would be  
4 important to include in the investigative report?

5 A. I would say --

6 MR. COGLIANESE: Objection.

7 A. -- that I consider important to include  
8 all relevant information that we have.

9 Q. And that would be relevant information?

10 A. It sounds like it could be.

11 Q. Yeah.

12 I mean, is there some question in your  
13 mind about whether it would be relevant?

14 A. I would just go back to specific dates  
15 and times are always more important than I think I  
16 remembered him on --

17 Q. Uh-huh.

18 A. -- some of these days.

19 Q. But in the absence of a specific date,  
20 a general, yeah, I saw him on a regular basis  
21 would be valuable information in the  
22 investigation?

23 MR. COGLIANESE: Objection.

24 A. It would be something to consider, yes.

1 Q. Besides just Corporal DeGoey, Officer  
2 Morgan gave to the investigators and to you  
3 information about other people who could similarly  
4 corroborate his claim that he was doing this job,  
5 just on different days.

6 A. I didn't hear a question.

7 Q. Do you remember that?

8 A. Go ahead and ask it again then.

9 Q. Do you remember that Officer Morgan  
10 offered other potential people who might be able  
11 to corroborate his account that he was working  
12 this assignment on a regular basis?

13 A. Not specifically. I don't remember  
14 names and specific persons.

15 Q. I'm not saying he gave names. I'm just  
16 saying do you remember that he offered that there  
17 were other people who he would come into contact  
18 that the investigators might be able to follow-up  
19 with?

20 A. I believe that he said that he had had  
21 other contacts with people while he was working at  
22 Stratford. But I don't remember him giving us any  
23 information that -- who that was, where it was and  
24 all of that.

1 Q. I mean it wasn't just that he said I  
2 saw people. He said I saw this one guy who lived  
3 in this particular type of location and you can  
4 try and find him?

5 A. He potentially could have said that and  
6 I just don't recall it.

7 Q. Okay. So you don't remember one way or  
8 another whether he said that?

9 A. I don't recall right now, no.

10 Q. Okay. Do you -- if he had said that to  
11 the investigators, would you have expected them to  
12 make an effort to try to figure out who those  
13 people were?

14 A. If there was enough information that  
15 they could have followed up on to get that, again,  
16 it goes back to specific dates and times. So I  
17 don't know if they could have corroborated that  
18 information or not.

19 Q. Okay.

20 A. And it just depends on the amount of  
21 information that was available to try to --  
22 accomplish that.

23 Q. I mean -- I'm sorry. I'll let you --

24 A. Yeah.

1 Q. I mean, it's not your position that if  
2 Officer Morgan -- given that Officer Morgan didn't  
3 have, you know, organized documentation showing I  
4 was there on this date, I was there on this date,  
5 I was there on this date, it's not your position  
6 that the only way he could corroborate his account  
7 was by having people say, yes, I saw him at 9:30  
8 p.m. on Friday, October whatever? He could -- he  
9 could at least make his account more likely by  
10 presenting witnesses who said, well, I worked late  
11 on Fridays and I would come back to my apartment  
12 and I would see him stationed at the Stratford  
13 Lakes apartment where he would have no other  
14 reason to be. That would make it more likely that  
15 he was telling the truth?

16 MR. COGLIANESE: Objection.

17 A. More likely telling the truth that he  
18 -- that he worked different days than Wednesdays?

19 Q. Yes.

20 A. Yes.

21 Q. And more likely that he was working  
22 times at Stratford Lakes when he wasn't marking in  
23 service on the radio?

24 MR. COGLIANESE: Objection.

1 Q. Since they didn't have a lot of -- they  
2 didn't have marked in service information showing  
3 that he had marked in.

4 A. What was the question?

5 Q. Well, for example, I'll go back to the  
6 DeGoey example. On October 13th, it's pretty  
7 clear that Officer Morgan was working the  
8 Stratford Lakes assignment but he hadn't marked in  
9 service.

10 A. Okay.

11 Q. And his failure to mark in service was  
12 one of the main sources of evidence that he wasn't  
13 working the assignment.

14 A. It was one of the factors, yes.

15 Q. Okay. So Corporal DeGoey's testimony  
16 didn't just show that there was a date that  
17 Officer Morgan worked other than the one he was  
18 assigned, it also showed that on at least one  
19 occasion he worked the assignment but he didn't  
20 mark in service?

21 A. Correct.

22 MR. COGLIANESE: Objection.

23 Q. Okay. So if there were other witnesses  
24 who also said I saw him on a Friday or I saw him

1 on a Sunday or I saw him on a Tuesday, it would  
2 corroborate two aspects of Officer Morgan's  
3 account. One would be that he worked other days  
4 than the ones he was assigned and that he worked  
5 -- he was working at Stratford Lakes during time  
6 periods when he had not marked in service.

7 MR. COGLIANESE: Objection.

8 Q. Right?

9 A. It could, yes.

10 Q. Okay. And that would not just depend  
11 on the concept of a witness somehow remembering,  
12 you know, a year or more after the fact I saw him  
13 on such and such a date at such and such a time,  
14 it could also be at least somewhat corroborated by  
15 a witness saying I saw him regularly at this  
16 apartment complex or I was accustom to seeing him  
17 on Fridays when I came home from work or something  
18 along those lines.

19 MR. COGLIANESE: Objection.

20 A. I already answered that. What --

21 Q. I'm just saying --

22 A. What's the difference?

23 Q. -- not just that he was working other  
24 days but that he was working days that he had not

1 marked in service.

2 MR. COGLIANESE: Objection.

3 Q. Do you remember having a chief's  
4 hearing for Officer Morgan's discipline?

5 A. Yes.

6 Q. Do you remember Officer Morgan telling  
7 you that there were specific people that he saw at  
8 the apartment complex who might be able to  
9 corroborate his account in response to your  
10 questions?

11 A. I don't recall any names being given.  
12 But I'm not saying --

13 Q. I'm not asking you about names. I'm  
14 saying there were, like, individual people that he  
15 remembered seeing.

16 A. He might very well have said that.

17 Q. Okay. Having reviewed the  
18 investigative summary, there were no other  
19 interviews that the officers conducted or no other  
20 indication that the internal affairs sergeants had  
21 tried to find any people like that, right?

22 MR. COGLIANESE: Objection.

23 A. There's -- I don't recall any other  
24 names of people that they interviewed, yes. And I

1 don't know what lengths they went to to track down  
2 people that were unnamed by Officer Morgan.

3 Q. Okay.

4 MR. VARDARO: I'm going to need 19.

5 BY MR. VARDARO:

6 Q. I'm handing you what's been marked as  
7 Plaintiff's Exhibit 19. This is -- well, first of  
8 all, can you tell me, does this appear to be your  
9 chief's hearing for Officer Morgan?

10 - - - - -

11 Thereupon, Plaintiff's Exhibit 19 is  
12 marked for purposes of identification.

13 - - - - -

14 A. It appears to be a transcript of it,  
15 yes.

16 Q. Okay. Can you take -- there's pages at  
17 the bottom. I'm actually not sure what the  
18 pagination is based on. But it starts at page 55.

19 A. Yes.

20 Q. P55.

21 A. Yeah.

22 Q. Can you take a look at P65? Do you see  
23 toward the end of the hearing -- well, actually, I  
24 will say this does look like it's towards the end



1 of the hearing because there are only a couple  
2 more pages after that, right?

3 A. Yep.

4 Q. So toward the end of the hearing at the  
5 bottom of that page you say, "Did you talk to  
6 people?" And he says, "Yes ma'am." And you say,  
7 "You know, did you do anything to make it clear  
8 that" --

9 A. Wait. Wait. Where are you?

10 Q. I'm at the bottom of page P65.

11 A. Okay.

12 Q. Do you see those questions, where that  
13 starts?

14 A. Okay.

15 Q. And then if you flip over to the next  
16 page, do you see in the first long paragraph of  
17 his response you've asked him, "Was there somebody  
18 that you checked in with; who did you talk to?"

19 A. Uh-huh.

20 Q. And he lists a person who is not  
21 employed by Stratford but did extra work in the  
22 office and who would know that he was around and  
23 was doing the work. And then there's another  
24 person who -- a male black truck driver who lived

1 where he parked at and would comment come home at  
2 1:00 or 2:00 in the morning and would come over  
3 and talk to him while he was in his truck -- I'm  
4 sorry. His mom would come down the steps and come  
5 over and talk to him? Do you remember Officer  
6 Morgan telling you these things during the chief's  
7 hearing?

8 A. Well, I see it there, so.

9 Q. Okay. Did you do anything after this  
10 to ask the sergeants to try to find these people  
11 and see whether Officer Morgan was telling the  
12 truth about them?

13 A. No.

14 Q. Okay. Why not?

15 A. I believe that the evidence that we had  
16 at that time was sufficient, that he'd had an  
17 opportunity prior to this to give that  
18 information. If it wasn't followed up when he  
19 gave it, if he gave it prior to that. Your  
20 opportunity to give us information is -- is, you  
21 know, long before you get to the chief's hearing.

22 Q. Uh-huh.

23 A. And unless -- unless I feel like there  
24 is not enough evidence or that this is totally

1 brand-new evidence that actually could persuade me  
2 in a different direction. But just based on this,  
3 you know, that it doesn't -- you know, I never --  
4 I never came to the conclusion that he was never  
5 at Stratford Lake. You know, there were  
6 definitely times when he was at Stratford Lake.  
7 So trying to match up dates with people that had  
8 seen him after the fact more than a year, two  
9 years later wasn't going to change my opinion that  
10 we had evidence that these rule violations had  
11 occurred. That did not sound to me that it was  
12 going to be the kind of information that would  
13 change the facts that I had in front of me.

14 Q. Can you take a look at Exhibit 15, it's  
15 the -- I think it's this one. Yeah. I'll just  
16 flip to the page for you if you don't mind, save a  
17 little bit of time. And for the record, I'm  
18 flipping to the twelfth page of the second part of  
19 this exhibit, which has number 160 at the bottom.

20 Just the first thing you said was, you  
21 know, the chief's hearing is obviously not the  
22 time when you come up with for the first time new,  
23 you know, potentially exculpatory information.  
24 Looking at the top of this page, this confirms the

1 chief's hearing wasn't the first time he mentioned  
2 the truck driver guy, right?

3 A. Correct.

4 Q. He told that to the sergeants, so if  
5 you had followed up with the sergeants after the  
6 chief's hearing and said, hey, did he mention this  
7 at the time, that would have confirmed at least  
8 that, oh, yeah, he mentioned it, we just didn't  
9 ever try to find this guy. Would that have raised  
10 a concern with you?

11 MR. COGLIANESE: Objection. Go ahead.

12 Q. For you I should say?

13 A. So what was the question?

14 Q. If you had gone to Sergeant Meister --  
15 is that the -- Sergeant Meister is at the chief's  
16 hearing, right? The IA sergeant would typically  
17 be at the chief's hearing?

18 A. He was. Yeah, they usually are but not  
19 always.

20 Q. So if you had pulled Sergeant Meister  
21 aside after the chief's hearing and said, hey,  
22 he's talking about a potential witness here, did  
23 you try to -- did he ever mention that to you or  
24 is this just brand new information, presumably

1 Sergeant Meister would have said, oh, yeah, he  
2 mentioned it at some point. And then would you  
3 have -- you know, do you remember any conversation  
4 like that for instance?

5 A. Could have occurred.

6 Q. Okay. I mean if Sergeant Meister  
7 had --

8 A. Those --

9 MR. COGLIANESE: Hold on.

10 A. -- conversations aren't recorded. So I  
11 cannot remember something that happened that long  
12 ago specifically about this particular thing.

13 Q. I understand. I'm just saying assuming  
14 that you would have had a conversation like  
15 that --

16 A. Uh-huh.

17 Q. -- and Sergeant Meister said, oh, yeah,  
18 he mentioned it, and you said, you know, well, did  
19 you talk to this person. And he said no, we never  
20 even bothered to try to find this person who he  
21 said could potentially corroborate his account.  
22 Would that raise a concern for you about the  
23 investigation?

24 MR. COGLIANESE: Objection.

1 A. It would depend on the type of answer  
2 that I got, yes.

3 Q. Okay. I will represent -- you know, I  
4 don't want to go find all the portions of the  
5 interview again on your time, because it's -- I  
6 don't think it's reasonably in dispute.

7 But Officer Morgan mentioned at least a  
8 couple of other people who he says he told Officer  
9 Tony Roberts to talk to to confirm that he was  
10 actually working this assignment, including this  
11 sort of part-time volunteer property manager  
12 person and someone who he calls the African guy  
13 who he doesn't really specify, but he makes it  
14 clear that Tony Roberts knew who the African guy  
15 was. And the officers -- the sergeants first of  
16 all don't ask any follow-up questions about who  
17 Officer Morgan might be talking about. And second  
18 don't indicate at all that they went to try to  
19 find or identify or talk to Tony Roberts about.  
20 Does that raise a concern for you about the  
21 investigation?

22 MR. COGLIANESE: Objection.

23 A. If they believed that they could get  
24 information that would follow-up on some of his

1 statements, then certainly I think that that would  
2 be information worth knowing. I don't know what  
3 their considerations were. I don't know what  
4 direction they may or may not have been given by  
5 the internal affairs chain of command with regard  
6 to following up, getting more information, whether  
7 they felt like let's focus on this instead of  
8 that.

9 Q. Yeah.

10 A. So looking at it, you know, without  
11 knowing all of that in the context in which it was  
12 done, yeah, you could say it looks like, you know,  
13 it could have been better. But I don't know all  
14 the considerations that were in play at the time.

15 Q. I mean just looking at the  
16 investigation, it seems as if these sergeants,  
17 particularly Sergeant Meister, did a ton of  
18 legwork to find information about Officer Morgan's  
19 potential misconduct?

20 A. But we're not just the sergeant --

21 Q. Within the department -- not just? I'm  
22 sorry.

23 A. Not just the sergeant. Chris Bond did  
24 a great investigation.

1 Q. Yeah.

2 A. You know.

3 Q. The criminal investigation, which took  
4 place before Officer Morgan provided any --

5 A. Correct.

6 Q. -- information because he was advised  
7 to not give a voluntary criminal interview?

8 A. Correct.

9 Q. Which is typical of officers, right? I  
10 mean, the FOP attorneys usually tell them don't  
11 give an interview in a criminal investigation  
12 because you're -- you don't have your guaranteed  
13 protections?

14 A. I would say that's more often than not.

15 Q. You certainly don't hold it against an  
16 officer in a disciplinary investigation that they  
17 didn't participate in the criminal investigation?

18 A. That would be true.

19 Q. Illegal? It would be illegal if you  
20 did that, correct?

21 A. Correct.

22 MR. COGLIANESE: Objection.

23 Q. So you don't do it?

24 A. Correct.



1 Q. So Officer Bond certainly didn't have  
2 an opportunity to follow-up on witnesses on behalf  
3 of Officer Morgan because Officer Morgan wasn't  
4 participating in it?

5 A. Those that he brought up, yes.

6 Q. And he didn't have, for instance, the  
7 information about Corporal DeGoey and the incident  
8 at the Kroger?

9 A. To my knowledge.

10 Q. Okay. But all of these, Officer Bond,  
11 Sergeant Meister, Sergeant Decker, they did a lot  
12 of digging to find documents that showed Officer  
13 Morgan was not working on the Wednesday nights  
14 when he was assigned. But I haven't identified  
15 virtually anything that they did to follow-up on  
16 information that might corroborate Officer  
17 Morgan's account other than calling Corporal  
18 DeGoey. And so my -- I mean, I guess you  
19 mentioned well, it depends on how long it would  
20 have taken to do this or it depends on how long it  
21 would have taken to do that. The investigation  
22 all told took almost two years. Would it really  
23 have been a consideration of, oh, it's going to  
24 take an extra day to go over to Stratford Lakes

1 and try to find this person?

2 MR. COGLIANESE: Objection.

3 A. That's not my -- that's not my call  
4 back when the investigation is underway.

5 That's --

6 Q. You were the chief of police.

7 A. I don't have the day-to-day chronology  
8 of what a case is doing. So that's the call of  
9 the lieutenant and the commander in internal  
10 affairs to say go follow-up on that. They read  
11 this back and forth, back and forth, they -- they  
12 prepare a draft, they send it back, they go say go  
13 do this, go do that. So it's not something that  
14 is brought to my attention should we follow-up on  
15 that, should we follow-up on that. That's --

16 Q. During --

17 MR. COGLIANESE: Hold on. She's not  
18 done.

19 Q. I'm sorry. I'm not doing it on  
20 purpose, Rich. Go ahead.

21 A. It's just the way that the structure of  
22 internal affairs is set up to provide guidance  
23 with regard to how the investigation should be  
24 conducted. And then if they feel like there's a

1 gap or anything else, then they would direct them  
2 to close that gap. If they felt that there was a  
3 bias, they -- you know, they should, you know,  
4 point that out and try to make sure that there is  
5 no bias. That's all part of the internal affairs  
6 chain of command review process.

7 Q. During your term as chief, who did the  
8 commander of internal affairs report to?

9 A. I think for the entire time that was  
10 me.

11 Q. And that was a change that came in?

12 A. Correct.

13 Q. Prior to that there had been a layer of  
14 command in between you and --

15 A. Deputy chief, yeah.

16 Q. Okay. And at the end of the internal  
17 affairs process once the conclusions came in and  
18 once things came from a chain of command, you  
19 certainly had the authority as chief to say I'm  
20 not satisfied with this investigation, and in this  
21 particular respect, please go do some follow-up?

22 A. That depended. If it was a citizen  
23 complaint, then I couldn't oftentimes ask for more  
24 investigation because of time limits. And if it

1 was an internal investigation such as this, then  
2 that depended on whether or not I felt that there  
3 was something that was, you know, important to the  
4 outcome. But I don't -- I don't recall too many  
5 instances where by the time it got to me, that I  
6 would have sent it back and said, you know, this  
7 is lacking something that I need to have.

8 Q. The only thing that you saw that was  
9 lacking at the end of this investigation was there  
10 wasn't a charge of 1.04 for cause for dismissal?

11 A. I would --

12 MR. COGLIANESE: Objection.

13 A. I would not say that.

14 Q. Okay. Was there something else  
15 lacking?

16 MR. COGLIANESE: Objection.

17 A. I don't recall specifically having some  
18 of the concerns that you've raised about not  
19 following up with some of these particular persons  
20 or not, I could have very well brought that up in  
21 the chief's hearing afterwards to get it  
22 addressed. But, you know, I always -- not always.  
23 There are a number of times when I think an  
24 investigation could have gone in a different

1 method, manner, asked better questions, followed  
2 up with more people. I've very -- I don't  
3 remember ever seeing a perfect investigation.

4 Q. Okay. In your time when you were  
5 commander for IAB, if you had been confronted with  
6 this investigative summary and the interview of  
7 Kevin Morgan raising these potential corroborating  
8 witnesses, would you have instructed the  
9 investigators to do some additional work to try to  
10 find the witness?

11 A. I would have asked --

12 MR. COGLIANESE: Objection.

13 A. -- what the -- I mean, if it got to me  
14 and it came to my attention, I would have asked  
15 what their thought process was on more follow-up.

16 Q. Okay. And if their thought process was  
17 we just didn't do anything to try to identify  
18 these witnesses, including even asking Officer  
19 Morgan for more information, would you have  
20 directed them to do something more?

21 MR. COGLIANESE: Objection.

22 A. I -- it's hypothetical. I don't -- I  
23 don't know what I would have done.

24 Q. You don't know what you would have done

1 if the officers had been presented with potential  
2 corroborating witnesses and had done nothing in  
3 response to follow-up on that?

4 MR. COGLIANESE: Objection.

5 A. If there was reason to believe that  
6 they actually had corroborating material then,  
7 yes, I believe that I would have said try to find  
8 them.

9 Q. And in this case there was reason to  
10 believe that they might have had corroborating  
11 material because literally the officers were  
12 asking Officer Morgan if there was anybody who  
13 might have corroborating material and these were  
14 the people that he listed?

15 MR. COGLIANESE: Objection.

16 A. He listed without names and dates and  
17 times and place, yes.

18 Q. But with some locations and even some  
19 roles within the apartment complex?

20 A. It could have been done, yes.

21 Q. Okay. And it should have been done?

22 MR. COGLIANESE: Objection.

23 A. I don't know that I can say that  
24 because I don't know what the context of that

1 information was. I don't know if they were told  
2 not to by a lieutenant or a commander for some  
3 specific reason. So without knowing more about  
4 that thought process, if it was even a thought  
5 process, I can't say. If they were told not to do  
6 something, if they were said, you know, we did  
7 look and try but we couldn't find anything, I --  
8 you know. It would have been nice to have some  
9 reference to it, but I don't know that it wasn't  
10 documented somewhere or discussed somewhere.

11 Q. Well, part of the context was this was  
12 an officer who everybody knew his job was  
13 potentially on the line or at the very least  
14 serious discipline was on the line, right?

15 A. Correct.

16 Q. And you certainly believed that this  
17 was an important question since you asked it at  
18 the chief's hearing?

19 A. Yes.

20 Q. Okay. And now at least you know that  
21 the sergeants asked it in their investigation and  
22 got an answer from Officer Morgan, and then  
23 apparently did nothing at all to follow-up on it,  
24 including asking Officer Morgan for more

1 information, asking Officer Roberts who apparently  
2 also knew these people for more information or  
3 going to the apartment complex and just trying to  
4 find them. Does that -- I mean, doesn't that tell  
5 you that this is work, investigative work that  
6 should have been done as part of this  
7 investigation?

8 MR. COGLIANESE: Objection.

9 A. It would have been beneficial.

10 Q. And it should have been done?

11 MR. COGLIANESE: Objection.

12 A. As I said before, I don't know what the  
13 circumstances were whether it was discussed,  
14 reviewed and decided upon.

15 Q. Okay. Assuming that Commander Knight  
16 didn't tell these sergeants not to do it and there  
17 were no other circumstances that would have  
18 prevented them from doing it, it should have been  
19 done?

20 MR. COGLIANESE: Objection.

21 A. An attempt could have been made, yes.

22 Q. And it should have been made?

23 MR. COGLIANESE: Objection. Asked and  
24 answered.



1                   MR. VARDARO: No. She hasn't answered  
2 it. I keep saying should they have done it and  
3 she keeps saying they could have done it. I'm  
4 just asking for a simple yes or no.

5                   MR. COGLIANESE: On a hypothetical  
6 question.

7                   MR. VARDARO: Should they have done  
8 this investigative work?

9                   MR. COGLIANESE: Jeff, move on.  
10 Q.               Should they have done this  
11 investigative work given the circumstances that  
12 you're aware of?

13                   MR. COGLIANESE: Move on. Objection,  
14 asked and answered.

15 Q.               You can go ahead and answer the  
16 question.

17                   MR. COGLIANESE: If you want to answer  
18 it for the twelfth time, you're free to. If you  
19 don't feel like answering it for a twelfth time,  
20 you don't have to.

21 A.               I want to get to the facts of the case  
22 that's relevant to statements. There were other  
23 factors involved in this particular case that  
24 certainly I considered to be very relevant with

1       regard to the rule violations. Having that  
2       information and it not being a question, yes, now  
3       I can say we could have had that and then we would  
4       have known instead of not knowing.

5       Q.           But you can't say, yes, it should have  
6       been done?

7               MR. COGLIANESE: Objection. That's the  
8       thirteenth time that's been asked.

9       A.           I don't know the circumstances under  
10      which that decision was made.

11      Q.           Based on the circumstances that you do  
12      know, should they have followed up and tried to  
13      find these potential corroborating witnesses?

14               MR. COGLIANESE: That's it. That is  
15      the last time that question is going to be asked.

16               MR. VARDARO: Do you want to call the  
17      judge? Let's call the judge.

18               MR. COGLIANESE: You've asked him how  
19      many times.

20               MR. VARDARO: She hasn't answered it,  
21      yet, Rich.

22               MR. COGLIANESE: She has, you just  
23      don't like the answer.

24               MR. VARDARO: Please stop making

1 speaking objections. If you don't want her to  
2 answer the questions, let's try to get on the  
3 phone with the judge.

4 MR. COGLIANESE: She has answered the  
5 question. Chief, if you want to answer it again,  
6 go ahead. Jeff, move on.

7 A. Not knowing anything else but knowing  
8 that this is an issue right now, then, yes, I can  
9 say it should have been done so that we don't have  
10 this issue.

11 Q. Okay. Do you want to take a break for  
12 -- do you need lunch or --

13 MR. COGLIANESE: Let's go off the  
14 record.

15 (A short recess is taken.)

16 BY MR. VARDARO:

17 Q. Okay. You mentioned an officer named  
18 Mayhew who had been terminated or recommended for  
19 termination at some point?

20 A. I did.

21 Q. I think you said that you had testified  
22 about his case sometime in the last few weeks?

23 A. Arbitration hearing last week.

24 Q. Oh, okay. So his case is still in

1 arbitration?

2 A. Yeah.

3 Q. Okay. I didn't know. When was he  
4 terminated? Do you know what, I'll withdraw it.

5 A. I think it was 2016, but I'm not sure.

6 Q. Okay. During the Morgan investigation,  
7 Officer Morgan's union attorney Ron Snyder was  
8 sitting in on his interviews. Do you remember  
9 that at all?

10 A. I saw reference to it.

11 Q. Okay. At some point Mr. Snyder had  
12 recommended checking the walkie log to see whether  
13 Officer Morgan had any walkie-talkie activity  
14 during the times when he was supposed to be at  
15 Stratford Lakes or during other times that could  
16 confirm that he was on duty. Do you remember  
17 that?

18 A. Not specifically, no.

19 Q. Okay. I'll represent to you that both  
20 Mr. Snyder and Sergeant Decker during the  
21 interview acknowledged that that could show some  
22 evidence of Officer Morgan being on duty during  
23 the time -- during this time period, but nothing  
24 -- there's no indication that anybody actually

1 followed up and pulled that data from the  
2 division. Do you have any knowledge of why that  
3 would be?

4 MR. COGLIANESE: Objection. Go ahead.

5 A. Not that I recall, no.

6 Q. Okay. There is a statement in the  
7 internal affairs summary that Officer Morgan  
8 consistently marked in service for his other  
9 special duty assignments but not for the Stratford  
10 Lakes assignment. Do you remember that from  
11 reading it?

12 A. I remember that there were notations  
13 that -- I don't know about the word  
14 "consistently." But if you -- if that's what's  
15 there, then it is. But I remember that there were  
16 instances where he did mark with the radio room  
17 and that there were other instances in some of  
18 them at least, not more of them, when there  
19 weren't any radio transmissions or marking in I  
20 should say were related to his work at Stratford  
21 Lakes.

22 Q. Okay. Was that something you relied on  
23 in terms of your determination that Officer Morgan  
24 was being un -- or being not actually making up

1 his hours at Stratford Lakes?

2 A. I consider it to be a violation of our  
3 rules when you don't mark in service, so, yes.

4 Q. Well, you -- I'll break it into two  
5 separate things. First, he was disciplined with a  
6 DCC for not marking in service on a number of  
7 occasions --

8 A. I believe that's true.

9 Q. -- related to this investigation.  
10 That's not what he was terminated for though?

11 A. Correct.

12 Q. My question is did you rely on Sergeant  
13 Meister's assertion that Officer Morgan was  
14 marking in service for all of his other  
15 assignments but not for the Stratford Lakes  
16 assignment in determining whether or not Officer  
17 Morgan was actually working the Stratford Lake  
18 assignment?

19 A. I considered it. I wouldn't say that I  
20 relied on it, but I considered it.

21 Q. Okay.

22 (A short recess is taken.)

23 BY MR. VARDARO:

24 Q. I'm going to move onto a different

1 subject.

2 At the chief's hearing -- well, my  
3 understanding is during chief's hearings for  
4 discipline during your time as chief, there would  
5 be some form of presentation from professional  
6 standards lieutenant, whoever was the lieutenant  
7 attending that hearing about comparable cases?

8 A. Not during the hearing.

9 Q. Not during the hearing. When would  
10 that be?

11 A. After we had the hearing, went off the  
12 record, excused the focus officer and the  
13 representatives, then we would talk about what was  
14 presented. And if it was something that I wasn't  
15 already aware of, then we would talk about  
16 comparables.

17 Q. Okay. When you say it was something  
18 you weren't already aware of, do you mean if it  
19 was comparables you weren't already aware of?

20 A. Sometimes going into a hearing, I would  
21 have already asked for the comparables.

22 Q. Okay.

23 A. And the lieutenants might have already  
24 provided that to me.

1 Q. Okay. Do you remember which it was in  
2 Officer Morgan's case, whether you got the  
3 comparables before or after the hearing?

4 A. I don't recall.

5 Q. Okay. When you would get a list of  
6 comparables before or after the hearing, was it  
7 provided to you in writing or was it just a verbal  
8 summary from the lieutenant?

9 A. It varied. Sometimes it was in writing  
10 and sometimes it was verbal.

11 Q. Okay. Do you remember what form,  
12 whether you got a verbal or a written summary of  
13 comparables from the PSB lieutenant in Officer  
14 Morgan's case?

15 A. No.

16 Q. Okay. Do you remember which PSB  
17 lieutenant gave you the list?

18 A. No.

19 Q. Okay. Can you describe to me what the  
20 discussion was after the -- after you went off the  
21 record in Officer Morgan's chief's hearing?

22 A. I don't have any specific recollections  
23 of the discussion.

24 Q. How about generally?



1       A.           I would have to -- to guess, because I  
2       don't have a specific memory of it. But, you  
3       know, typically we would say what do you think of  
4       the presentation of the information? Are there --  
5       is there enough evidence here. I would generally  
6       ask the deputy chief present to say what they  
7       think before I do so that, you know, I don't give  
8       them an idea of where I might be going. I would  
9       sometimes ask the people that aren't the deputy  
10      chief what they thought. If I had any questions  
11      of the IA investigator, I would ask. I just don't  
12      remember any specific conversation in this  
13      particular case.

14     Q.           Okay. Is there anything you could look  
15     at that could remind you of the conversation?

16     A.           Not that I am aware of.

17     Q.           Okay. No notes, no minutes, nothing  
18     like that?

19     A.           No.

20     Q.           Okay. Do you remember which deputy  
21     chief was in attendance?

22     A.           Well, based on this, I would assume  
23     that it was Chief Kuebler.

24     Q.           Okay. What gives you that --

1           A.           Well, he was the deputy chief that  
2           signed off on this.

3           Q.           Okay. Do you remember in particular  
4           whether Chief Kuebler presented a point of view in  
5           terms of this case and the strength of the  
6           evidence or anything like that?

7           A.           I don't recall that it was different  
8           than mine --

9           Q.           Okay.

10          A.           -- of it being sustained and --

11          Q.           Okay. Do you remember --

12          A.           -- that the evidence was there.

13          Q.           Okay. Do you remember any difference  
14          of opinion among anybody involved?

15          A.           Not that I recall.

16          Q.           Okay. Do you remember what any of the  
17          comparable cases were?

18          A.           I don't know that we had too many that  
19          were comparable about, you know, being accused of  
20          taking pay for that. There's one old case that  
21          ended up getting criminally charged, went into  
22          diversion program and got expunged from the  
23          record, so it's sealed records and there's no  
24          information that's available.

1 Q. Okay. Was that officer terminated?

2 A. No. No.

3 Q. Do you remember who the officer was?

4 A. Yeah. I know who it was.

5 Q. Are you not able to tell me because of  
6 the --

7 A. I don't believe I'm allowed to.

8 Q. So you're not going to tell me?

9 A. It's a sealed record.

10 Q. It's a sealed record?

11 A. It's not even -- the -- without naming  
12 the officer, you know, it was about a case where  
13 an officer was working special duty for a bank and  
14 hadn't worked there for -- or was accused of not  
15 having worked there for quite sometime, and the  
16 records indicated that that was true, he  
17 acknowledged it at some point in time. He was  
18 charged criminally with a felony and the bank kind  
19 of backed out on the prosecution's side of, you  
20 know, going after it very hard so they agreed to  
21 the diversion program. Somebody in CPD agreed to  
22 diversion program unbeknownst to the chief of  
23 police and so he was allowed to go through that  
24 program. After a year, he was allowed to have the

1 record sealed.

2 Q. Okay. That was before you were chief?

3 A. It was when I was in internal affairs  
4 and/or part of internal affairs and maybe another  
5 assignment after that.

6 Q. Okay.

7 A. So --

8 Q. Was the officer disciplined?

9 A. I don't recall.

10 Q. Was there some aspect of the criminal  
11 diversion program that was binding on the division  
12 of police?

13 A. Well, the conviction went away, so I --  
14 I believe there was also contractual issue, I  
15 think that they said that there was -- a violation  
16 of 814, I believe, which was something to do with  
17 it extending beyond 180 days and no discipline or  
18 something like that. Citizen complaint kind of a  
19 thing whether it was or wasn't.

20 Q. Uh-huh.

21 A. So I think contract -- and there might  
22 have been a disciplinary process. It's just that  
23 I was a commander at the time and I don't recall  
24 all the details of what happened after it was

1 outside of my bailiwick.

2 Q. Okay.

3 A. I just remembered that that was an  
4 accusation of being paid for special duty and not  
5 being there.

6 Q. Okay. Were there any comparables  
7 presented where the officer was terminated?

8 A. I can't remember anything that was that  
9 close.

10 Q. Okay. Were there any other comparables  
11 presented that -- where the officer wasn't  
12 terminated?

13 A. Not that I recall. I mean like I said,  
14 I don't recall the specific conversation. And I  
15 don't recall another instance where the allegation  
16 was that you're getting paid and you weren't  
17 there.

18 Q. Okay. Is it your recollection in  
19 general that there was only one comparable  
20 presented, or do you think there were more  
21 comparables and you just can't remember what they  
22 were?

23 A. I don't even know if that other one was  
24 presented as much as I remember it.

1 Q. Okay. So is it possible there were no  
2 comparables presented?

3 A. Well, we always try to, you know, see  
4 if anything else will be called a comparable. And  
5 so we might have discussed other instances where  
6 people have been paid for work not performed.

7 Q. Uh-huh.

8 A. I know that we've had a lieutenant that  
9 -- a lieutenant that was suspected of abusing  
10 overtime. And he I believe resigned before he got  
11 to the -- I think I made a recommendation of  
12 termination, but I think he might have resigned  
13 before he was fired.

14 Q. Was that Troy --

15 A. Troy Casner.

16 Q. -- Casner, yeah.

17 A. Yeah.

18 Q. Okay. In that case, the lieutenant was  
19 also alleged to have tampered with the  
20 investigation, right?

21 A. Oh, by talking to people. I think that  
22 was -- yes.

23 Q. He was talking to his subordinate about  
24 the investigation --

1 A. I believe that that's --

2 Q. -- and trying to compare stories with  
3 them?

4 A. I think that's it, yes.

5 Q. I'm sorry. We're talking over each  
6 other.

7 A. Or tell them what he wanted them to  
8 remember.

9 Q. Right.

10 A. Correct.

11 Q. And that was a -- that was sustained  
12 against him --

13 A. Yes.

14 Q. -- in addition to the time issue?

15 A. I don't recall what the allegations  
16 were. But I remember that it was about time and  
17 that, yes, he was accused of talking to people.

18 Q. Okay. Do you remember whether or not  
19 that was brought up as a comparable in the Kevin  
20 Morgan discussion or are you just sort of trying  
21 to remember other similar cases?

22 A. Yeah. The latter.

23 Q. The second. Okay.

24 Is there anything that you could look

1 at to remind you of what the comparable cases  
2 would have been that you discussed?

3 A. Like I said, I just don't remember that  
4 there was anything that I would describe as a  
5 close comparable.

6 Q. Okay. Well, can you remember what the  
7 reasoning was discussed whether it was your  
8 reasoning or the reasoning presented by others as  
9 to why Officer Morgan was terminated in this case?

10 MR. COGLIANESE: Objection. Go ahead.

11 A. I could only tell you that I was  
12 convinced that there was some critical misconduct  
13 that had occurred that was of a criminal nature,  
14 theft. I considered it to be that he was asked to  
15 work four hours a week and could not prove that he  
16 had worked four hours a week. I believe that the  
17 evidence showed that there was at least some type  
18 of deception or deceit going on with regard to  
19 implying that he was working Wednesday nights from  
20 9:00 to 1:00 because that's what the invoices were  
21 for, that he was in two places or, you know,  
22 thought to be in two places at the same time, that  
23 he was expected to work four-hour shifts and  
24 sometimes worked less than four-hour shifts but



1 still accepted the payment for the entire four  
2 hours. His -- his answers, his reasoning, his  
3 defense was not credible enough to make me believe  
4 that those facts weren't true.

5 Q. Anything else?

6 A. Not that I recall.

7 Q. Okay. You knew that the invoices for  
8 the jobs were going out the same way every week  
9 regardless of which actual days the officers on  
10 this assignment were working?

11 A. I understood that he was being paid to  
12 work Wednesday nights from 9:00 to 1:00 and that's  
13 what the invoices were being paid for.

14 Q. Okay. But that was true even during  
15 the time when Officer Morgan was switching days  
16 with the knowledge and authorization of Officer  
17 Roberts?

18 MR. COGLIANESE: Objection.

19 A. I don't know about prior to that break  
20 off point where he got a set schedule.

21 Q. Okay. Assuming for the moment that the  
22 invoices were basically going out as Wednesdays  
23 even when his special duty coordinator knew that  
24 he was working a different schedule, would that

1 suggest to you that -- it still suggests to you  
2 that it was deceptive for him to invoice for  
3 Wednesdays when he was working on Fridays or  
4 Sundays or something like that?

5 MR. COGLIANESE: Objection. Go ahead.

6 Q. Or was the deceptive part that he  
7 wasn't working the actual number of hours claimed?

8 A. I would say both. I don't believe that  
9 he was working the hours claimed. And the fact  
10 that prior to he was giving actual hours and then  
11 stopped giving actual hours in my opinion is very  
12 damaging with regards to accountability. You  
13 know, why would you stop? If you were told this  
14 is the schedule, work that schedule, you don't do  
15 that and you don't provide any of the former --  
16 formerly provided dates and times, then to me  
17 that's a big absence and omission that could lead  
18 to the likelihood that you're deceiving.

19 Q. Well, you understood there was a  
20 difference of recollection between Officer Morgan  
21 and Officer Roberts in terms of Officer Roberts  
22 said, yeah, I told him just work Wednesdays from  
23 now on and Officer Morgan said I'm generally going  
24 to work Wednesdays but there may be days when I

1 have to switch?

2 MR. COGLIANESE: Objection. Go ahead.

3 A. I mean I don't specifically recall  
4 that. But I knew that they had given somewhat  
5 different statements, yes.

6 Q. Okay. You just chose to believe  
7 Officer Roberts rather than Officer Morgan in this  
8 particular instance?

9 A. Well, I believe that the indications  
10 are that Officer Roberts had no reason to make  
11 something up and that Officer Morgan certainly had  
12 a reason to remember things differently if it was  
13 in his favor because he was the one being accused  
14 of not doing things the right way.

15 Q. Okay. So when two officers --

16 A. Officers --

17 MR. COGLIANESE: Well --

18 Q. I'm sorry. I didn't realized you  
19 weren't done.

20 A. Officer Roberts gave a statement that  
21 indicated that this is what he had been told by  
22 management and that he was passing that  
23 information along, and so I didn't have any reason  
24 to disbelieve what he had indicated. You know, I

1 -- I know that everybody's memory as we've noted a  
2 number of times is not perfect. And so it's not  
3 the question always of accusing somebody of lying  
4 or not, it's just that's how they remember things.  
5 And so I didn't have a reason to believe that  
6 Officer Roberts was remembering it, you know,  
7 wrong and I -- I do know that Officer Morgan had a  
8 reason to say, no, it's okay, you know, I'm  
9 allowed to flex my hours, you know, I had a deal,  
10 they were aware of it.

11 Q. Because --

12 A. It could be true, but it could be made  
13 up.

14 Q. Because he was under investigation, he  
15 had a reason to make it up?

16 A. Absolutely.

17 Q. So one officer is under investigation  
18 and the other officer isn't, that's a basis for  
19 concluding that the one officer is being truthful  
20 and the other one isn't?

21 MR. COGLIANESE: Objection.

22 A. That's not the only factor that's taken  
23 into consideration. But certainly if you're the  
24 one under investigation, there's kind of an

1       automatic motive to lie.

2       Q.           Okay.

3       A.           I've taught that for years, and said  
4       that, you know, why do we trust an officer when  
5       you say you ran a red light? And we believe him  
6       up and down, right? But then when somebody makes  
7       a complaint and says, well, they were rude to me,  
8       now -- now the officer is accused. They didn't  
9       change, there's just a inbuilt motivation to deny,  
10      that every, every person that talks about  
11      credibility will teach you that.

12     Q.           Okay. But typically in a CPD  
13      investigation if one officer is saying this  
14      officer committed misconduct and the officer who  
15      is being accused says no, I didn't, here's what  
16      actually happened, the investigator, the chain of  
17      command, they don't generally take that as  
18      anything -- as a, you know, well, this officer is  
19      less credible because he's under investigation,  
20      that's not -- I can't say I've ever seen that  
21      cited as a factor in an investigation, that's why  
22      I'm asking you about it.

23     A.           I'm not sure what the -- what the  
24      question is.

1 MR. COGLIANESE: Objection.

2 Q. Your testimony is when one CPD officer  
3 makes an allegation against another CPD officer,  
4 the complaining officer is automatically more  
5 credible than the focus officer?

6 A. I didn't say that.

7 Q. In a sort of he-said-she-said?

8 A. I didn't say that.

9 Q. Okay. In the Roberts/Morgan situation,  
10 Roberts -- if Roberts said, yeah, I told him to  
11 show up every Wednesday 9:00 to 1:00 and Morgan  
12 said 9:00 to -- Wednesday 9:00 to 1:00 was the  
13 baseline, but I told him that I might not be able  
14 to make it every Wednesday and I would work  
15 different days, did -- that's a he-said-she-said.  
16 By itself, that would be a he-said-she-said type  
17 situation.

18 A. Well, what he said --

19 MR. COGLIANESE: Objection.

20 A. -- was plausible. He went to look for  
21 him on a Wednesday night. Why would you look for  
22 him on a Wednesday night if you thought that he  
23 was allowed to work differing shifts and, you  
24 know, follow-up on what had been told by

1 management who didn't see him on a Wednesday  
2 night. Why would he look for him on a Wednesday  
3 night? So it's based on what he said, not just  
4 he's the complaining --

5 Q. It's based on what they each said and  
6 then some of the surrounding circumstances is what  
7 you're saying?

8 A. Yeah.

9 Q. Okay. Officer Morgan was not charged  
10 with or nor did he have a sustained allegation of  
11 untruthful conduct in this situation, correct?

12 A. Correct.

13 Q. Once you recommended termination --  
14 well, first of all, let me ask a basic question.  
15 Your recommendation for discipline in this  
16 situation was a 240-hour suspension I believe and  
17 termination?

18 A. I believe so.

19 Q. What's the purpose of that? Sort of --  
20 I mean, obviously a six week suspension doesn't  
21 really mean a whole lot if the officer is also  
22 being terminated, right?

23 A. Yep. That was something that I saw  
24 being done by previous chiefs and there wasn't a

1 lot of explanation for that in the past. But I  
2 had never been given any guidance not to do that  
3 by the safety director.

4 Q. Just sort of tradition?

5 A. It was a little bit of tradition. Also  
6 just that, you know, in case an arbitrator or  
7 somebody decided or even the safety director  
8 decided that termination wasn't, you know --  
9 wasn't appropriate. Okay, but if you don't do  
10 that, then do this.

11 Q. Uh-huh.

12 A. Because if it's either, you know --

13 Q. It's just --

14 A. If it's either no termination or  
15 scot-free, then I think that there should be some  
16 type of corrective action. So it's my way and I  
17 think previous chiefs way of saying I believe it's  
18 very strong corrective action that's necessary.  
19 And if you don't go for the termination, then, you  
20 know, at least give them a suspension.

21 Q. Okay. Did you attend a director's  
22 hearing in Kevin Morgan's case?

23 A. No.

24 Q. Do you ever attend director's hearings?



1 A. No.

2 Q. Okay. Did you have any discussion with  
3 -- at the time it was Director Speaks who did  
4 Kevin Morgan's director's hearing. Did you have  
5 any discussion with Director Speaks about this  
6 case?

7 A. Not that I recall.

8 Q. Would you typically?

9 A. No.

10 Q. Okay. Did you have any discussions  
11 with the union about trying to resolve Kevin  
12 Morgan's case based on his suspension or something  
13 less than a termination?

14 A. Not that I recall.

15 Q. Okay. Would you typically have a  
16 discussion with the union about that?

17 A. Not that I recall, no.

18 Q. Okay. Did you have any role in Kevin  
19 Morgan's arbitration?

20 A. I might have very well testified. I  
21 just don't specifically remember.

22 Q. Okay. Do you remember that in Kevin  
23 Morgan's case he -- the City attempted to deprive  
24 Officer Morgan of his arbitration right because he

1 had filed a charge with the EEOC or the civil  
2 rights commission?

3 MR. COGLIANESE: Objection.

4 A. I think I'm aware of that.

5 Q. Did you have any opinion or input into  
6 that decision?

7 A. That's not my call.

8 Q. Okay. Do you know of an officer named  
9 Ricky Anderson?

10 A. Yeah.

11 Q. Was he terminated or disciplined at  
12 some point for a time -- like, misreporting time  
13 incident?

14 A. Could be.

15 Q. Okay. Was he ever mentioned as a  
16 comparable in Kevin Morgan's case?

17 A. I don't know.

18 Q. Okay. Was that a special duty  
19 situation?

20 A. I don't know. I don't recall what  
21 you're talking about, so I can't --

22 Q. Okay. You recalled making a  
23 disciplinary recommendation in the case involving  
24 Bronson Constable and Doug Jones and some other

1 officers regarding misreporting leave?

2 A. Yes. I remember a case involving him  
3 and Sergeant Jones and I'm not sure who else.

4 Q. Would you differ with me if I said that  
5 your recommendation in the Constable and Jones  
6 case came within a few months of Officer Morgan's  
7 case?

8 A. Would I what?

9 Q. Would you disagree with that general  
10 timeline?

11 A. I don't recall specifically. But I  
12 wouldn't have the facts to disagree with you.

13 Q. Okay. Do you remember which case  
14 happened first?

15 A. Not really.

16 Q. Okay. The findings in the Constable  
17 and Jones case were very similar to Officer  
18 Morgan's case, right?

19 MR. COGLIANESE: Objection. Go ahead.

20 A. What do you mean by "findings"?

21 Q. The findings -- the disciplinary  
22 findings against the officers, a similar rule of  
23 conduct, it was a similar circumstance?

24 MR. COGLIANESE: Objection. Go ahead.

1 A. It could be. I just don't remember the  
2 specific charges.

3 Q. Okay. The officers in those -- first  
4 of all, those are two sergeants, right? Bronson  
5 Constable and Doug Jones?

6 A. Correct.

7 Q. There was also a Sergeant Fox, I  
8 believe it was, under investigation?

9 A. Yeah, that sounds familiar.

10 Q. And Sergeant Knight, who was Jennifer  
11 Knight's husband?

12 A. Correct.

13 Q. As well as their lieutenant, whose name  
14 escapes me at the moment was --

15 A. Spears.

16 Q. Spears was investigated for failure to  
17 supervise?

18 A. Uh-huh.

19 Q. Sorry. You have to say yes or no. You  
20 said uh-huh.

21 A. Yes.

22 Q. Okay. And those are all white  
23 officers?

24 A. Yes.

1 Q. Okay. The allegation -- I want to  
2 focus particularly on Constable and Jones because  
3 I think the other officers were exonerated or  
4 found to have committed less serious conduct. But  
5 the findings as to -- the investigative findings  
6 as to Constable and Jones was that they had failed  
7 to report to work on a number of occasions as  
8 patrol sergeants for their regular duty and had  
9 not submitted leave slips for those hours. Does  
10 that sound right?

11 A. Correct.

12 Q. Okay. This is another investigation I  
13 assume you were kept updated by Commander Knight  
14 or whoever was in charge of IAB at the time?

15 A. Yes.

16 Q. The allegations against those sergeants  
17 was sustained and recommended for departmental  
18 charges?

19 A. I know some were. I don't know if  
20 everything was. But, yes, I do know that some  
21 were, yes.

22 Q. Well, one difference actually in this  
23 case was those two officers, those two sergeants  
24 were alleged to have been untruthful during their

1 investigations. Does that ring a bell?

2 A. I don't specifically recall it, but

3 I --

4 Q. Okay.

5 A. It could very well be.

6 Q. If I said --

7 A. Were they charged with untruthfulness?

8 Q. I will represent to you they were --

9 there was an allegation of untruthfulness brought

10 up during the investigation by internal affairs,

11 and the internal affairs recommendation was not

12 sustained but the investigator indicated that it

13 was a close call. Does that -- is any of this

14 refreshing your recollection or you just don't

15 remember this investigation?

16 A. No, I remember --

17 Q. Okay.

18 A. -- the investigation as a whole. But I

19 don't remember a lot of specific details.

20 Q. Okay. Do you remember that in the

21 Constable and Jones case that Bronson Constable

22 had sustained allegations against him that he had

23 failed to take leave for 19 full days that he had

24 not reported to work?

1 A. It could be that.

2 Q. Sounds like that ball park?

3 A. Number, uh-huh.

4 Q. It was a total of 152 hours of working  
5 time.

6 A. Okay.

7 Q. And Sergeant Jones it was 23 days and  
8 184 hours. Does that sound about right?

9 A. Could be, yeah.

10 Q. Okay. And it was -- I've seen some  
11 news reports, I haven't done the calculations  
12 myself. But I've seen some news reports  
13 indicating that the time that was not taken --  
14 that leave wasn't taken for was worth seven or  
15 eight thousand dollars for each officer?

16 A. Okay.

17 Q. Does that sound about right?

18 A. I have no idea what their pay rate was  
19 or what the amount of money that could have been,  
20 but --

21 Q. Do you recall from reading Officer  
22 Morgan's investigation that he was being alleged  
23 to have failed to report for 11 four-hour shifts?

24 MR. COGLIANESE: Objection.

1 A. Say that again.

2 Q. The allegations against Officer Morgan  
3 consisted of -- the ones where he was alleged not  
4 to have shown up at all for shifts at Stratford  
5 Lakes was for 11 four-hour shifts?

6 A. Well, you said alleged. I mean, I -- I  
7 don't know that that number represents all the  
8 allegations.

9 Q. Those are the sustained allegations.

10 A. Okay.

11 Q. The sustained allegations were 11  
12 four-hour shift and then a few partial?

13 A. You didn't say sustained before.

14 Q. I'm sorry. I refer to them as alleged  
15 because Officer Morgan does not --

16 A. But I think there were other dates that  
17 were alleged as well, so.

18 Q. Sure. So for these purposes, I'm  
19 talking about the sustained allegations confirmed  
20 by the division of police, consisted of 11  
21 four-hour shifts and then a few partial shifts?

22 A. That sounds right.

23 Q. Okay. And so roughly -- so if you take  
24 that as, you know -- anyway, bottom line is it was



1 a much fewer number of hours than Constable and  
2 Jones overall?

3 A. However you want to describe much,  
4 it's --

5 Q. Okay.

6 A. -- a difference.

7 Q. I mean about a quarter?

8 A. And smaller.

9 Q. It's about a quarter, right? I mean --

10 A. Eleven and nineteen are not a quarter.

11 Q. I guess I would say a third. Well, but  
12 it's 11 four-hour shifts versus 19 eight-hour  
13 shifts?

14 A. Okay.

15 Q. So you're talking about a far less -- a  
16 far lower amount of time?

17 MR. COGLIANESE: Objection.

18 Q. Do you disagree with that  
19 characterization?

20 A. Amount of time, it's definitely a  
21 difference, yes.

22 Q. Yeah. The amount of time and money at  
23 stake in the Constable and Jones case was much  
24 more than the amount of time and money at stake in

1 the Morgan case?

2 MR. COGLIANESE: Objection.

3 A. You can characterize it that way if  
4 you'd like.

5 Q. Okay. Well, would you characterize it  
6 that way?

7 A. There was a difference. Yes.

8 Q. And it was a fairly -- I mean, in terms  
9 of proportions, it was a fairly large difference?

10 MR. COGLIANESE: Objection.

11 A. I don't know what the numbers are. But  
12 yeah, it was smaller.

13 Q. Okay. Does it matter in an  
14 investigation -- like in terms of the discipline  
15 whether an officer failed to report for one shift  
16 or 20 shifts?

17 A. Yes.

18 Q. Okay. So quantity of time and money  
19 being, you know, misreported or stolen matters?

20 A. Yeah. I don't look at it as the money  
21 because pay rates are different and all that kind  
22 of stuff. I mean, certainly I need to be  
23 conscious of the fact that, you know, the  
24 taxpayers are paying our salaries. Special duty

1 employers are paying special duty employee  
2 salaries. But it's the act of misrepresenting or  
3 not being present or not being on time that is  
4 most relevant.

5 Q. Okay. But the quantity matters, too,  
6 in terms -- for instance, an officer comes into  
7 work 20 minutes late 10 days in a row versus the  
8 officer just skips 10 shifts in a row, that's a  
9 different volume of misconduct, right?

10 MR. COGLIANESE: Objection.

11 A. There's a different amount, but it  
12 doesn't mean that the behavior is less serious.

13 Q. Okay. So you can see disciplining two  
14 officers the same for one of them shows up late 10  
15 days in a row and one of them just doesn't show up  
16 10 days in a row?

17 MR. COGLIANESE: Objection.

18 A. It depends on the circumstances. I  
19 mean, were they ordered to be here the next day,  
20 you know, were they, you know -- I mean, the facts  
21 of each case matter. And I can't theoretically  
22 say one is different than the other without  
23 knowing what each situation is and calls for and  
24 what the responses would be and who was aware and

1 all of that.

2 Q. Okay. So you can't tell me whether  
3 skipping 20 minutes of a shift is the same as  
4 skipping the shift?

5 MR. COGLIANESE: Objection.

6 A. There's a difference. But as far as  
7 the outcome of a disciplinary decision, it still  
8 depends on what the facts are.

9 Q. Okay. Assuming every other fact about  
10 the case is the same, there's no special order or  
11 no, you know -- anything like that, wouldn't you  
12 expect that the disciplinary recommendation all  
13 the way up the chain and including yourself would  
14 be more for the officer who skips an entire shift  
15 than the officer who skips 20 minutes of a shift?

16 MR. COGLIANESE: Objection.

17 A. If every single thing is the same, the  
18 defense is the same, there might be a difference.

19 Q. Okay. Do you remember -- first of all,  
20 it was Daniel Weaver that did the investigation of  
21 Constable and Jones. Does that ring any bells?

22 A. Sounds likely.

23 Q. Okay. Do you remember -- first of all,  
24 the officers, Sergeant Jones, Sergeant Constable

1 never admitted any of their alleged misconduct?

2 A. Well, Sergeant Jones came forward after  
3 Constable was accused and said I might have  
4 misreported some of my time, so he in one sense  
5 came forward with potential errors, but ultimately  
6 he denied that he had stolen time.

7 Q. And Constable said that he never did  
8 anything wrong and he submitted leave slips for  
9 every hour of time that he missed?

10 A. Well, I think that's the gist of that,  
11 yeah.

12 Q. And in Sergeant Jones's case the fact  
13 that he came forward with additional leave slips  
14 that he had not previously submitted was actually  
15 pretty strong evidence of his other misconduct  
16 that he didn't admit?

17 A. It didn't help him at all.

18 Q. In fact, it made it appear that he was  
19 being purposefully dishonest?

20 A. Well, misleading at least, yeah.

21 Q. Because he had come forward with leave  
22 slips for time that he had not reported missing,  
23 and it happened that every single new leave slip  
24 he came up with he had in fact not previously

1 submitted leave for and he had no way to know that  
2 without knowing that he hadn't done it.

3 MR. COGLIANESE: Objection.

4 A. I don't remember all that specific.

5 Q. Well, does that sound familiar?  
6 Basically he had no way to know which time he had  
7 missed that he had reported leave for and which  
8 time he hadn't reported leave for within a  
9 particular pay period?

10 A. That could be.

11 Q. And yet he somehow guessed which days  
12 he had and hadn't reported?

13 A. That could be.

14 Q. Do you remember that Sergeant Weaver  
15 had done some sort of back-of-the-envelope  
16 calculations and come up with, you know, that it  
17 was sort of extremely unlikely that somebody would  
18 randomly guess correctly on those?

19 A. I don't remember that.

20 Q. It was discussed at the chief's  
21 hearing, so I didn't -- it was like a 1 and 256  
22 chance or something. I'm --

23 A. I'm --

24 Q. I'm just asking your memory.

1 A. I'm saying I don't recall it.

2 Q. Okay. But it was something along those  
3 lines, that it was the fact that he had come up  
4 with those leave slips made it seem more likely  
5 that he was intentionally failing to submit leave?

6 A. Yeah.

7 Q. Which he did not admit to?

8 A. Yes. To the best of my recollection,  
9 neither one of them accepted responsibility for  
10 any errors.

11 Q. Okay. And certainly not for any  
12 intentional misconduct?

13 A. Correct.

14 Q. The allegations against those officers  
15 were widely reported in the media, it was an  
16 embarrassment for the department.

17 A. Yes.

18 Q. Do you remember seeing and knowing  
19 about the news articles at the time?

20 A. I can't imagine that I wasn't.

21 Q. Okay. In both of their cases the  
22 allegations against the officers were submitted  
23 for criminal investigation, just like in Morgan's  
24 case.

1 A. Is that a question?

2 Q. Yeah.

3 A. Yes.

4 Q. Okay. And the officer who did the  
5 criminal investigation, do you remember who that  
6 was?

7 A. No.

8 Q. Okay. But you remember it wasn't  
9 prosecuted criminally?

10 A. Correct.

11 Q. Do you recall that it was prosecutor  
12 Jeff Blake that made that decision?

13 A. I thought Ron O'Brien had weighed in on  
14 that.

15 Q. Do you remember that the reason for the  
16 lack of prosecution was extremely similar to the  
17 reasoning that we talked about earlier for not  
18 prosecuting Officer Morgan?

19 MR. COGLIANESE: Objection. Go ahead.

20 A. No. What I recalled was that the  
21 reasons were is that our recordkeeping system was  
22 such a mess that because we had records of people  
23 actually doing the opposite, you know, they were  
24 actually at work when we didn't have a record of



1       them being at work and vice versa, that our  
2       recordkeeping system was such a mess that we  
3       couldn't successfully prove that leave slips had  
4       not been turned in. And so I thought that the  
5       opinion was such that damaged even our  
6       administrative case because of the opinion of -- I  
7       thought it came from Ron O'Brien but maybe it  
8       didn't. I don't know.

9       Q.           What you're describing to me sounds a  
10      lot like what Jeff Blake said in Officer Morgan's  
11      case, which was there weren't very good records of  
12      the special duty assignment that Officer Morgan  
13      was participating in. And the -- the property  
14      manager for the department complex herself had  
15      said that she wanted the officers to vary their  
16      hours and be a little unpredictable and keep  
17      people on their toes. That -- you think that you  
18      see those as very different explanations for not  
19      prosecuting?

20                   MR. COGLIANESE: Objection.

21      A.           I -- that's kind of a convoluted  
22      statement there. The systems both might have had  
23      errors, not the same kind of error. We had a  
24      leave slip request system in place that is nothing

1     like what Officer Morgan is accused of. You know,  
2     you requested leave by putting a slip in the  
3     supervisor's tray. The supervisor is supposed to  
4     sign it, take it into payroll and it gets  
5     processed. That has nothing to do with Officer  
6     Morgan's case. He wasn't requesting leave. He  
7     wasn't saying, hey, I'm going to be off this day  
8     or anything like that. So I don't see a  
9     similarity in the timekeeping process.

10    Q.           In both cases --

11    A.           Both.

12    Q.           I'm sorry. Go ahead.

13    A.           Both of them, you know, relied on  
14    peoples' integrity to a large degree. And both  
15    systems ended up being abused in my opinion by  
16    people that were less than integrity [sic].

17    Q.           Okay. So it sounds to me like you're  
18    agreeing with me that in both cases what the  
19    prosecutor's office reported was it would be  
20    difficult to prove or disprove the officer's  
21    claims who are under investigation and there  
22    weren't going to be records that could sort of  
23    demonstratively discredit or be used to prove the  
24    criminal investigation.

1 MR. COGLIANESE: Objection.

2 A. I think that was part of the decision  
3 making. Not all of it for each one, they each had  
4 different factors, but, yeah.

5 Q. You mentioned the taxpayers and the  
6 private companies that pay for special duty --  
7 taxpayers pay your salaries for the police  
8 officers, and in special duty cases you're talking  
9 about private companies paying for the services?

10 A. Of a special duty officer.

11 Q. Yeah.

12 A. Correct.

13 Q. Does that make one or the other more or  
14 less important in terms of discipline?

15 A. It goes back to the act itself. You  
16 know, is it stealing, is it deception, is it  
17 double dipping, all of that.

18 Q. I guess I'm asking if you make a  
19 distinction between those things or whether  
20 they're all just wrong.

21 A. I don't consider it to be a big  
22 difference, no.

23 Q. Would you agree with me that the  
24 investigation of Constable and Jones was more

1       thorough than the investigation in Morgan's case?

2       A.           I don't have any basis to say that.

3       Q.           Well, do you remember that an officer  
4       in the Constable and Jones case, they didn't just  
5       check the duty roster and compare it to their  
6       leave slips, they actually went through and they  
7       examined the officer's radio logs and walkie  
8       records and ID swipes, they went so far as to look  
9       through all the officer's e-mails to see whether  
10      they might have been sending e-mails on the days  
11      when they weren't on the duty roster to see if  
12      they could fill in any of the time for the  
13      officers? Do you remember any of that stuff?

14     A.           I would say I remember that it seemed  
15     like it was taking forever. And when I kept  
16     saying, you know, where is it, where is it, where  
17     is it, they said, well, we're out of the records  
18     warehouse going through records or something along  
19     those lines. And so I do remember that I was  
20     constantly being told that there were more records  
21     that they were searching and more records that  
22     they were searching, and so whether that amounts  
23     to more thorough, you know, it certainly sounds  
24     like there were a lot of records that were

1 checked.

2 Q. Okay. And a lot of the records that I  
3 just mentioned were actually ways that could have  
4 been used to corroborate Sergeant Constable or  
5 Sergeant Jones' claims that they might have been  
6 in the workplace rather than absent without leave?

7 A. Well, I mean it's just to get to the  
8 facts. Whether -- purpose -- you're alluding that  
9 there's a purpose in it. In my opinion it's to  
10 try to check the records that are available to see  
11 what it tells us.

12 Q. Right.

13 A. It's getting to the facts.

14 Q. But the purpose is to rule out the  
15 possibility or rule in the possibility that the  
16 officers were actually working as opposed to  
17 missing time without leave.

18 A. Well, it's to determine whether or not  
19 there's any evidence that says that they were at  
20 work or not.

21 Q. Okay.

22 A. I mean, it's --

23 Q. In every single one of the cases, in  
24 every single date that was at issue, the starting

1 point for the investigation was Sergeant Constable  
2 and Sergeant Jones were not on the duty roster  
3 that was kept for the patrol sergeants, but they  
4 had also not submitted a leave slip, and it was  
5 not the case in this investigation that sergeant  
6 Weaver just said, okay, well, the evidence is  
7 you're not on the duty roster, so you're not at  
8 work, let's see if there's a leave slip, end of  
9 story. He went further and said, okay, maybe they  
10 weren't on the duty roster but maybe they sent an  
11 e-mail, maybe they swiped their badge, maybe they  
12 did this. All of those methods were ways to  
13 determine whether or not the officers were on duty  
14 beyond just the initial evidence that they  
15 weren't, right?

16 MR. COGLIANESE: Objection.

17 A. Yeah. I mean, it's to find out what --  
18 what happened, if they were working, if they  
19 weren't working, if there was any evidence that  
20 supported it one way or the other.

21 Q. In addition to all of those methods,  
22 Sergeant Weaver also pulled all of the leave slips  
23 and duty rosters for the other sergeants in the  
24 same unit. Do you remember that?

1           A.           Yeah. I know that other sergeants were  
2           looked at and that's how I believe Fox and Knight  
3           got looked at. I don't know who he considered to  
4           be the unit, but, yeah.

5           Q.           So I mean Knight for instance was the  
6           complaining officer; do you remember that?

7           A.           Correct.

8           Q.           And he ended up getting disciplinary  
9           allegations against him, they were ultimately  
10          exonerated. But he became a focus --

11          A.           Yes.

12          Q.           -- because Sergeant Weaver decided to  
13          pull all of the records for the other officers?

14          A.           Yes.

15          Q.           Which was not -- that was not done in  
16          Officer Morgan's case for the Stratford Lakes job,  
17          for instance? You're not aware of any other  
18          officers --

19          A.           No.

20          Q.           -- whose time for marking in service  
21          was pulled for that job?

22          A.           Correct.

23          Q.           You knew -- I think we alluded to this  
24          before, but you knew Bronson Constable had a prior

1 untruthfulness on his record?

2 A. I was aware of that.

3 Q. Because he was on the 1010 or Brady  
4 list of officers who are -- probably shouldn't  
5 testify in criminal proceedings?

6 A. Well, it --

7 Q. It would have to be disclosed?

8 A. Yes. Yes.

9 Q. Okay.

10 A. Yeah. Whether they should testify or  
11 not is as opinion. But they need to disclose that  
12 they've been found to be untruthful in the past.

13 Q. Okay. Which is a serious problem for  
14 an officer's career?

15 A. Yes, it is.

16 Q. Okay. In that investigation, do you  
17 remember input whether you got input from  
18 professional standards before the -- before the  
19 chief's hearing or after the hearing about  
20 comparables?

21 A. Specifically what investigation are you  
22 referring to?

23 Q. The Constable and Jones and Fox and  
24 Knight?



1           A.           Oh, I thought you might have been  
2           referring to the 1010 one.

3           Q.           No. I'm sorry. The 1010 investigation  
4           you had no involvement with, I assume?

5           A.           No.

6           Q.           Okay. In fact, in -- but you're aware  
7           -- I've seen the 1010 list, we can pull it out if  
8           you want. But it says on the 1010 list he had  
9           three sustained allegations of untruthful against  
10          him.

11          A.           That might be, I --

12          Q.           1010 list --

13          A.           -- I don't remember the number.

14          Q.           The 1010 list is one of the records in  
15          the department that stays as long as the officer  
16          is in the department -- in the division, as  
17          opposed to other things that are required to be  
18          expunged over time.

19          A.           Now, yeah. We didn't have that policy  
20          in the contract prior to 20 -- what -- '13 or '12,  
21          something like that.

22          Q.           Okay. But at the time we're talking  
23          about, the 1010 list was permanent?

24          A.           Now it is, yes.

1 Q. Right. Now and in the 2013  
2 renegotiation or whatever year it was you're  
3 talking about.

4 A. Yeah, as far as I know.

5 Q. Okay. Certainly during this frame that  
6 I am that we're talking about, the 2014-2015.

7 A. As far as I know, yes. There was a lot  
8 of negotiation back and forth about the creation  
9 of that list and who should be on it.

10 Q. And Bronson Constable was on it?

11 A. I believe so.

12 Q. Okay. But I'm -- so in terms of the  
13 theft of time, misreporting leave investigation of  
14 Constable and Jones and the other officers, I  
15 assume there was a chief's hearing?

16 A. Yes.

17 Q. And do you remember whether you got  
18 comparables before the hearing or after the  
19 hearing?

20 A. No.

21 Q. Okay.

22 A. Not specifically.

23 Q. Do you remember whether it was in  
24 writing or verbally?

1 A. No.

2 Q. Do you remember whether there were any  
3 comparables presented?

4 A. I assume that we talked about similar  
5 cases that had, you know -- and I just don't  
6 remember the timing. I don't know if Officer  
7 LaRoche or Kirby were prior to or after. I  
8 just --

9 Q. I think they were both prior to.

10 A. Okay. So they probably would have come  
11 up.

12 Q. You think they were probably discussed?

13 A. Yeah.

14 Q. Do you think Officer Morgan's case came  
15 up?

16 A. Like I said before, I don't know  
17 which --

18 Q. It was like three-month --

19 A. -- occurred first.

20 Q. -- difference in the hearing.

21 A. Who was first?

22 Q. Morgan.

23 A. Okay. So in Jones and Constable, I  
24 would have already made a decision on Kevin's.

1 Q. Morgan's. Yes.

2 A. Yeah. It very well -- I mean, there's  
3 a good chance that it could have been discussed,  
4 yes.

5 Q. Okay. Why did you impose -- you  
6 remember you imposed 240 hours suspensions for  
7 Bronson Constable and Doug Jones?

8 A. I'm sorry.

9 Q. I'm sorry. You recommended 240 hours  
10 suspensions for Bronson Constable and Doug Jones.

11 A. Yes.

12 Q. Not termination.

13 A. Correct.

14 Q. Not demotion to officer.

15 A. Correct.

16 Q. Why that disciplinary recommendation  
17 and not termination or demotion?

18 A. I thought that termination was  
19 certainly on the table. I was appalled. I did  
20 not like the fact that they didn't take any  
21 responsibility for it. I didn't trust Sergeant  
22 Constable, as I stated before. But I felt that  
23 the evidence was not as strong I guess if we're  
24 comparing these two cases. The criminal

1 investigation and the comments about our leave  
2 keeping system were pretty damaging to the  
3 evidence. And I thought that a 240-hour  
4 suspension was probably the best that was going to  
5 be able to happen out of this. And if I thought  
6 that I could have gotten a termination, I probably  
7 would have recommended a termination. This was  
8 one of those I think where the FOP was as we  
9 discussed earlier fighting very strenuously to  
10 defend their honor, if you will, that they had  
11 some. So that was at least some line of the  
12 reasoning that I had. You know, I was sure that  
13 it had happened, but I thought the evidence was  
14 not the best.

15 Q. Well, first of all, was there any  
16 difference of opinion in the -- after the chief's  
17 -- discussion after the chief's hearing about  
18 whether they should go to termination?

19 A. Difference of opinion.

20 Q. Yeah. Did Deputy Chief Kuebler make a  
21 different recommendation, did anyone else?

22 A. I don't recall.

23 Q. What was the nature of the FOP's  
24 advocacy in this situation that led you to believe

1       they were defending their honor more?

2       A.           They just wanted to believe that it was  
3       all the fault of the leave keeping system --

4       Q.           Okay.

5       A.           -- the correspondence system. And it  
6       was a very large loophole if you will that had  
7       been pointed out by the prosecutor's office. And  
8       that not -- not their fault for, you know, putting  
9       a piece of paper in a tray and it never getting  
10      processed, so they were -- what I recall -- and I  
11      don't even remember who they were. But I just  
12      remember that it was pretty adamant that we didn't  
13      have the evidence, period, let alone, you know,  
14      51 percent.

15     Q.           After getting that notification from  
16     the prosecutor's office, didn't Sergeant Weaver  
17     address that potential loophole by comparing  
18     Constable and Jones' time with the other officers  
19     and sort of getting a baseline for the potential  
20     errors in the system?

21     A.           I don't remember any timing on that  
22     particular thing. But I --

23     Q.           Well, the criminal investigation was  
24     over before the administrative investigation

1 started as almost always happens, right?

2 A. Well, oftentimes there's some  
3 administrative investigation occurring during the  
4 pendency of the criminal investigation but for  
5 interviews of the focus officer. So I don't know  
6 when that was, but I don't consider it to be -- it  
7 might very well have been that with that  
8 information he did further investigation.

9 Q. Okay. You remember by the end of the  
10 investigation Sergeant Weaver felt it was -- the  
11 charges against the officers could be sustained  
12 based on the fact that it was extremely unlikely,  
13 if not impossible that these two sergeants and  
14 only these two sergeants would have a much, much  
15 larger number of missing leave slips than anybody  
16 else in the unit?

17 A. He convinced me that they were guilty  
18 of the charges.

19 Q. And none of that information to your  
20 knowledge was used by or presented to Ron  
21 O'Brien's office prior to their determination?

22 A. I don't know.

23 Q. Okay.

24 A. I don't -- I don't know what was

1 presented to the prosecutor's office.

2 Q. Okay. Have you seen arbitration  
3 proceedings where a letter from the prosecutor  
4 declining criminal prosecution -- or criminal  
5 charges was used in the arbitration?

6 A. I don't remember any specific  
7 arbitration hearing that went like that.

8 Q. Okay. I had asked previously about the  
9 FOP's advocacy, and I guess I just want to  
10 clarify. I understand what the substance of their  
11 advocacy was. I'm just asking you what was the  
12 nature of their advocacy. Like did somebody from  
13 the FOP come talk to you about these cases?

14 A. Not that I recall.

15 Q. Okay.

16 A. It's their defense in the hearing.

17 Q. At the chief's hearing?

18 A. I mean, sometimes their -- either their  
19 attorney or the FOP members are pounding their  
20 first and, arg, you can't find this person guilty,  
21 you know, da-da, da-da, da-da.

22 Q. Just louder?

23 A. Maybe, yeah.

24 Q. Okay. The suspensions that you



1 recommended against Constable and Jones were  
2 concurrent, two concurrent 240-hour suspensions  
3 for each of them. Do you remember that?

4 A. That sounds familiar.

5 Q. Okay. What's the purpose of a  
6 concurrent six-week suspension?

7 A. Well, six weeks is the max.

8 Q. Okay.

9 A. So you can't do more than that.

10 Q. Okay.

11 A. So you could say 12 weeks, but it's not  
12 going to be 12 weeks. It's going to be six weeks,  
13 that's the max.

14 Q. Okay.

15 A. But in general I try to give a level of  
16 disciplinary recommendation for each charge. So  
17 that -- I believe in this case that we're talking  
18 about today, you know, there might be departmental  
19 charges, but not everything would warrant  
20 termination. But by stating what it would be, at  
21 least you're on record as to what this would have  
22 been but for a suspension of longer term or, you  
23 know, termination or something like that. But  
24 because my disciplinary recommendations are often

1 compared to each other by other people, I want to  
2 be on record with different charges. You know, if  
3 it was a stand-alone charge, this is what it would  
4 be, you know, that kind of thing. Does that make  
5 sense?

6 Q. I guess I'm not going to render an  
7 opinion on that.

8 What's the practical consequence for  
9 the officer? Is there any?

10 A. If the director would decide on a  
11 240-hour suspension, it would still be a six-week  
12 suspension --

13 Q. But --

14 A. -- whether it's concurrent or not.

15 Q. Okay. But two concurrent 240-hours  
16 suspensions has the same practical impact on the  
17 officer as one?

18 A. They would lose six weeks of pay.

19 Q. Either way?

20 A. Correct.

21 Q. Okay. Do you recall that this case was  
22 settled prior to the safety director's  
23 determination?

24 A. I remembered that it was settled. I

1 just don't know the timing.

2 Q. Okay.

3 A. I don't know if they had had a hearing,  
4 if they hadn't had a hearing, but I know that it  
5 was settled.

6 Q. Okay. Do you remember that the outcome  
7 of the settlement was that they reduced the  
8 suspension for each officer from two concurrent  
9 240-hour suspensions to one 240-hour suspension?

10 A. I just remembered a 240-hour  
11 suspension.

12 Q. Okay. But that was -- I mean, your  
13 recommended discipline was 240 hours twice at the  
14 same time, concurrent, right?

15 A. Yeah.

16 Q. And the settlement of the suspension  
17 was one 240-hour suspension?

18 A. Correct.

19 Q. Do you have any explanation for what  
20 possible benefit the officers would get from  
21 agreeing to a settlement like that?

22 MR. COGLIANESE: Objection. Go ahead.

23 A. Benefit to the officers?

24 Q. Yeah. There was no practical impact;

1 we just talked about that; they lose the same  
2 amount of pay either way.

3 A. Correct.

4 Q. Is there -- there's no -- so what's the  
5 point? What was the point of the settlement like  
6 that?

7 A. You'd have to ask them.

8 MR. COGLIANESE: Objection.

9 Q. Okay. Did you have any discussions  
10 with the safety director about the settlement of  
11 that charge?

12 A. Not that I recall.

13 Q. Okay. Could the safety director have  
14 terminated these officers despite your  
15 recommendation of suspension?

16 A. Absolutely.

17 Q. Okay. Do you remember whether these  
18 officers were charged with a Rule 1.4 -- 1.04  
19 charge?

20 A. I don't recall specifically.

21 Q. Okay.

22 A. I don't think so.

23 Q. Do you remember writing in a 1.04 for  
24 these officers?

1 A. I don't remember that.

2 Q. Okay. Kevin Morgan's case at least  
3 until the filing of his lawsuit did not appear in  
4 any media coverage. Are you aware of any that I'm  
5 not?

6 A. I don't recall.

7 Q. Okay. You don't have the same  
8 recollection that it was a widely reported sort of  
9 public issue?

10 A. I don't remember it being widely  
11 reported.

12 Q. Okay. Did the safety director have to  
13 agree to a settlement with Constable and Jones, do  
14 you know?

15 MR. COGLIANESE: Objection.

16 Q. Is that typically what the nature of  
17 the settlement is?

18 A. They're the only ones that can approve  
19 one.

20 Q. Okay. You can't settle cases?

21 A. I cannot.

22 Q. Okay. And you were not involved in the  
23 settlement discussions at all?

24 A. No.

1 Q. Okay. Do you remember Zane Kirby's  
2 case? I think we mentioned it a little earlier.

3 A. Somewhat.

4 Q. Okay. Do you remember his -- first of  
5 all, Kirby was charged like Officer Morgan and  
6 like Sergeant Constable and Sergeant Jones with  
7 receiving pay for hours that he didn't work or  
8 receiving --

9 A. His was about --

10 Q. -- credit for --

11 A. His was about not being at work when he  
12 was supposed to be, yes.

13 Q. Right. But he was paid for those  
14 hours?

15 A. Yes.

16 Q. His case was not investigated by  
17 internal affairs, it was investigated by his own  
18 chain of command. Do you remember that?

19 A. Yes.

20 Q. Do you have an explanation for why that  
21 would be?

22 A. It seemed like it was a fairly  
23 straightforward case. He admitted to behavior at  
24 some point in time it seems like it was fairly,

1 fairly quick. It wasn't in my opinion an  
2 extensive number of dates. And Sergeant Reffitt  
3 was a former internal affairs supervisor or  
4 investigator, so we knew that she had the ability  
5 to get it done. And I'm always about trying to  
6 get it done as quickly as possible when possible.  
7 If there's, you know, good reasons to get them  
8 over with as quickly as possible.

9 Q. Okay. No criminal investigation of  
10 Kirby's case?

11 A. I don't think there was, no.

12 Q. Why not?

13 MR. COGLIANESE: Objection. Go ahead.

14 A. Because I generally prefer that there  
15 not be criminal investigations. And because of  
16 the number of days being fairly short, I thought  
17 it was prudent to get this done.

18 Q. Okay.

19 A. With the number of criminal  
20 investigations that we've had that have not  
21 resulted in charges, you know, I continue to be  
22 confident that that's going to be a rare  
23 occurrence when we get a charge filed against an  
24 officer with such charges, allegations.

1 Q. Okay. Officer Kirby originally claimed  
2 in response to Sergeant Reffitt's investigative  
3 interview questions that he -- there was a  
4 particular day out of the days when he was being  
5 investigated for where he was not receiving pay  
6 for time he hadn't worked but he had actually  
7 worked from them. Do you remember that?

8 A. That sounds familiar.

9 Q. And he claimed that he was installing a  
10 particular kind of surveillance software that he  
11 was using in his investigative work?

12 A. I think that sounds familiar.

13 Q. Okay. And then in a second interview  
14 after Sergeant Reffitt had started asking  
15 questions of some of his fellow officers about  
16 that software, he came in and admitted that in  
17 fact he did not work from home on that date and he  
18 just was overwhelmed with -- he was exhausted from  
19 working a long week and he just took the day off  
20 without permission?

21 A. Uh-huh.

22 Q. I'm sorry. You have to say yes or no.

23 A. Yes.

24 Q. And then in a third interview with



1 Sergeant Reffitt when Sergeant Reffitt was  
2 instructed to ask him about why he had lied about  
3 that day, he admitted that he had purposefully  
4 lied but that he -- he admitted to the lie because  
5 he realized he had been caught and he was  
6 concerned about the consequences. Does that all  
7 sound familiar?

8 A. Yes.

9 MR. COGLIANESE: Objection.

10 A. It's starting to trigger my memories.

11 Q. And then do you remember at the chief's  
12 hearing in Officer Kirby's case you asked him  
13 about working from home on that date and he  
14 actually told you in the chief's hearing that he  
15 had worked from home installing the same software  
16 that he had falsely claimed to Sergeant Reffitt?

17 A. I don't recall the specific comments,  
18 no.

19 Q. Okay. Can I get 8.

20 While they're looking for that, I want  
21 to ask you, I mean, you understood prior to the  
22 chief's hearing that Officer Kirby had been  
23 purposefully dishonest during the investigation of  
24 his time theft investigation, right?

1 A. I would have to assume if that was  
2 included in the investigation that I was aware of  
3 it, yes.

4 Q. I mean, not only was it included in the  
5 investigation but the deputy chief, I think it was  
6 Deputy Chief Gray -- oh, no, Deputy Chief Bash had  
7 actually repeatedly had to ask Sergeant Reffitt to  
8 go back and do follow-up to figure out why he had  
9 been untruthful and delve further into that pretty  
10 serious charge. You don't remember any of that?

11 A. No.

12 Q. Okay.

13 A. I have no specific memory of that.

14 Q. Okay. But certainly if it was in with  
15 the packet that you were presented prior to the  
16 chief's hearing, you would have known at the time  
17 the events that I just described where he  
18 originally claimed he worked from home.

19 A. If it was spelled out, I would have  
20 been aware of it.

21 Q. If it was spelled out.

22 One of the charges prior to the chief's  
23 hearing was untruthfulness, so certainly that  
24 would have been one of the things you were

1 focusing on.

2 A. Okay.

3 Q. I'm asking you.

4 A. I don't know what the charges were.

5 Q. Okay. Give me 4. Well, actually, give  
6 me 9. Might as well get 4, too. I'm handing you  
7 what's previously been marked as Plaintiff's  
8 Exhibit 4. And when I say "previously," I mean we  
9 premarked it; it hasn't been used previously. And  
10 I am just going to call your attention to the  
11 first couple pages. These are the charges that  
12 were issued to Sergeant Kirby prior to the chief's  
13 hearing, right, the first page and the second and  
14 the third?

15 A. Yes.

16 Q. Charge II, specification I is that on  
17 December 10th, 2013, he was untruthful to Sergeant  
18 Denise Reffitt during an administrative interview  
19 when he stated that he performed his December 6th,  
20 2016 tour of duty by working from home, and he  
21 knew at the time he made these statements that  
22 they were untruthful. Right?

23 A. Yes.

24 Q. And if you take a look at -- if you

1 flip through Exhibit 4, the first -- fairly early  
2 on in this packet, the first interview is marked  
3 for December 10th, 2013. If you flip a few pages.

4 A. What page is it?

5 Q. The exhibit isn't paginated, but if you  
6 go about 10 or 15 pages in, you'll start to see at  
7 the top.

8 A. What am I looking for?

9 Q. December 10th, 2013 interview.

10 MR. COGLIANESE: And why don't you  
11 count the pages and tell her where you're at so  
12 that way you guys are on the same page.

13 Q. If you hand it to me, I'll find it for  
14 you.

15 So here's the start of the December  
16 10th interview. Do you see that at the top?

17 A. Uh-huh.

18 Q. And there's pages numbers for each  
19 page --

20 A. Yes.

21 Q. -- of the interview. Can you flip to  
22 page 14 of that interview?

23 A. Okay.

24 Q. And on this page 14 she's asking him

1 about December 6th. Do you see that at the top?

2 Or toward the top?

3 A. On page 14?

4 Q. Yeah.

5 A. I see November 22nd being referenced  
6 there.

7 Q. And then she says, "So, I'm looking at  
8 December 6th, why nobody saw you, there are no  
9 card swipes for that day."

10 A. Yes, I see that.

11 Q. Okay. And then a few responses down he  
12 says, "I don't know if this counts, but I'm going  
13 to throw it out there. Chris Kline...I worked  
14 from home that day, Sarge." I'm not sure what the  
15 Chris Kline is. Do you see that?

16 A. I do.

17 Q. Okay. So he's saying he worked from  
18 home on December 6th, and his answer a couple  
19 answers down is that he was installing software on  
20 a laptop used for scanning Wi-Fi networks?

21 A. Correct.

22 Q. Then I'll flip a few more pages in here  
23 for you. This is page 5 of his second interview  
24 with Sergeant Reffitt which was on February 5th of

1       2014. And at the very bottom of the page Sergeant  
2       Reffitt says, "Okay, alright, on December 6th you  
3       did not report to work. That's a Friday. What's  
4       your explanation?"

5       A.           I see it.

6       Q.           And his answer is, "On that Friday I  
7       had, that week was a busy week as well. Um, and I  
8       had worked over my 8 hour tour several days that  
9       week. When Friday came, I was exhausted. I  
10      stayed at home and needed a break."

11                 And Sergeant Reffitt says, "So you  
12      didn't work from home...you just took the day?"  
13      And he says "Correct."

14                 And she goes further on in that page,  
15      you can see she's specifically saying, "previously  
16      you have told me...you worked from home. So, I  
17      take it that was not correct." And he says the  
18      reality was he was exhausted and he didn't work.  
19      Do you see all that?

20      A.           I do.

21      Q.           Okay. And then I'll flip for you one  
22      more time if you hand it back to me. The third  
23      interview from April of 2014, the very bottom of  
24      the fifth page of that interview, Sergeant Reffitt

1 asks him why he was untruthful in the first  
2 interview and why he admitted it in the second  
3 interview. And his answer was that he panicked.  
4 And then if you look at the second answer down on  
5 page 6, he says in terms of why he was truthful in  
6 the second time, he said I knew that I had been  
7 caught. Do you see that?

8 A. Uh-huh.

9 Q. Okay.

10 A. Yes.

11 Q. This was all information that you would  
12 have had at the time that the chief's hearing was  
13 scheduled and the charges were issued?

14 A. Correct.

15 Q. So now I'm going to hand you what's  
16 been marked as Plaintiff's Exhibit 8, which is a  
17 transcript of the chief's hearing. And if you  
18 could turn to the third page of that, oops, I  
19 should be following along. Do you see at the top  
20 of the page 3, in the middle of his answer he says  
21 December 6th, which was a Friday, do you see that  
22 part?

23 A. Uh-huh. Yes.

24 Q. He says December 6th -- and that's the

1 same date that we were just talking about in those  
2 three prior interviews, right?

3 A. Correct.

4 Q. So "December 6th, which was a Friday, I  
5 stayed home. I worked on a program known as  
6 Flying Squirrel." And he then describes the same  
7 software that's supposedly used for intercepting  
8 Wi-Fi signals or something like that. Do you see  
9 that?

10 A. Yeah.

11 Q. So in the chief's hearing he's going  
12 back to the original untruthful explanation that  
13 he gave to Sergeant Reffitt in his first  
14 interview. He's not saying he's exhausted, he's  
15 not saying he just missed work. He's saying, oh,  
16 no, I worked from home, I installed this software,  
17 the same answer he gave in the first interview.

18 A. He gave a similar explanation as he did  
19 in the first interview.

20 Q. The one that he later admitted to  
21 Sergeant Reffitt was false.

22 A. Correct.

23 Q. And I don't know if you remember this  
24 from the investigation, but it turned out that



1        what he was describing doing while he was working  
2        from home was not actually possible on his  
3        computer.

4        A.                I don't recall that.

5        Q.                Okay. I mean it's in the investigative  
6        packet, we can -- I don't want to spend the time  
7        going through it.

8        A.                Okay.

9        Q.                But the reason why his lieutenant  
10       concluded, lieutenant -- I think it was Lieutenant  
11       Springer maybe had -- the reason his lieutenant  
12       had concluded that he was purposefully untruthful  
13       and not just sort of confused or something was  
14       that he only came forward and admitted lying about  
15       working from home once he realized that Sergeant  
16       Reffitt was going around and asking other people  
17       about this software, and that it would have been  
18       obvious that he could not have done what he  
19       described doing. Is any of that ringing a bell?

20                        MR. COGLIANESE: Objection.

21       Q.                No.

22       A.                No.

23       Q.                I guess my question is do you remember  
24       at the end of this investigation what charges you

1       sustained against Officer Kirby?

2       A.           Not specifically, no.

3       Q.           Okay. Would you disagree with me if I  
4       told you you did not sustain his untruthfulness  
5       charge?

6       A.           Well, it's in writing, so.

7       Q.           Okay. Here, I'll just hand you what's  
8       been marked as Exhibit 9, and you can look at the  
9       first page for yourself. But the finding of  
10      untruthful is not sustained. Do you see that?

11                   - - - - -

12                   Thereupon, Plaintiff's Exhibit 9 is marked  
13      for purposes of identification.

14                   - - - - -

15      A.           I do.

16      Q.           Okay. Do you have any explanation for  
17      how you could not sustain an untruthfulness charge  
18      against an officer who admitted that he was  
19      untruthful and then repeated his untruthfulness in  
20      a hearing in front of you?

21                   MR. COGLIANESE: Objection.

22      A.           Do I have an explanation for it? Is  
23      that what you asked?

24      Q.           Yeah. Well, I'll withdraw that

1 question for a second.

2 First of all, Officer Kirby is a white  
3 officer.

4 A. Yes.

5 Q. Okay. Do you have an explanation for  
6 why Officer Kirby was not -- why you issued a not  
7 sustained finding for Officer Kirby on  
8 untruthfulness?

9 A. I can't remember what I was thinking at  
10 the exact moment when I decided to do that. But I  
11 felt that this officer very clearly exhibited some  
12 signs of being under great stress. He cried I  
13 believe during the hearing. If you've listened to  
14 the tape, then you might have heard that. I  
15 believe that he was very upset, rambling, offering  
16 things. He didn't have a representative to the  
17 best of my recollection, so he presented on his  
18 own behalf.

19 Q. That's something he chose to do, right?

20 A. Yeah.

21 Q. He could have had a representative if  
22 he wanted to?

23 MR. COGLIANESE: Let her finish the  
24 answer.

1 Q. I'm sorry. Were you not done?

2 A. No. I was still describing --

3 Q. Okay. I'm sorry. Go ahead.

4 A. -- what I recall of the hearing.

5 Q. Uh-huh.

6 A. I don't recall everything.

7 Q. Uh-huh.

8 A. But I remember that he was very upset.

9 He had been working in a very, very, very  
10 difficult assignment that plays on your motions  
11 and creates an awful lot of -- of I think turmoil  
12 perhaps when you see children and others being  
13 abused and you can't really do everything that you  
14 want to to deal with it. He was emotional,  
15 apologetic. And as I said before, I haven't read  
16 my entire transcript here. But I think that I  
17 might have recommended that he seek some  
18 counseling.

19 Q. Were you aware at the time -- I'm  
20 sorry. I'll let you keep going.

21 A. Feeling that he was suffering from a  
22 significant amount of stress and burnout.

23 Q. Okay. Do you remember whether he had  
24 been diagnosed with any kind of condition?

1 A. Not to my knowledge.

2 Q. Okay. His job -- what was his job?

3 A. He worked in the Internet crimes  
4 against children unit.

5 Q. Okay.

6 A. I believe.

7 Q. Is that a job where it's important for  
8 officers to be truthful?

9 A. Every job that we have is.

10 Q. Okay. Not sustaining the allegation of  
11 untruthfulness against Officer Kirby meant that he  
12 did not go on the 1010 list, right?

13 A. Correct.

14 Q. So criminal defendants who were being  
15 investigated by Officer Kirby would have no  
16 automatic basis to know that he had lied about  
17 reporting for duty and admitted lying because he  
18 had been caught in the lie.

19 MR. COGLIANESE: Objection.

20 A. Well, the requirement is that you  
21 report that to the prosecutor. The prosecutor  
22 then decides who needs to know what.

23 Q. Okay. You didn't report anything, you  
24 had no -- nothing to report to the prosecutor on

1 Officer Kirby because you issued not sustained for  
2 the untruthfulness.

3 A. Correct.

4 Q. Even though he admitted that he was  
5 untruthful?

6 MR. COGLIANESE: Objection.

7 A. I don't recall the words admitted that  
8 I was untruthful. He gave different statements.  
9 I don't -- did he say I admit that I lied?

10 Q. I think he did.

11 A. Okay. I'm just saying I can't -- I  
12 can't tell you what the word was.

13 Q. I mean it was clear that he was  
14 untruthful, right? There was really no dispute  
15 about it at the point at least prior to the  
16 chief's hearing?

17 MR. COGLIANESE: Objection.

18 A. He gave two different stories, so one  
19 of them is not true, yes.

20 Q. And then he explained why he was  
21 untruthful by saying the reason he was untruthful  
22 was because he was caught and he was concerned  
23 about the consequences.

24 A. Correct.

1 Q. We just read through that.

2 And then he lied again in the chief's  
3 hearing to you about working from home.

4 MR. COGLIANESE: Objection.

5 A. He very well could have. I don't know  
6 what he did while he was at home, whether he, you  
7 know, picked that up for five minutes or not. But  
8 I -- he certainly gave two different statements  
9 about the same day.

10 Q. And one of which he admitted was a lie,  
11 but that -- I guess so you're saying that you  
12 issued a not sustained on Officer Kirby because  
13 you felt he was stressed out from his job and he  
14 was emotional about his conduct.

15 MR. COGLIANESE: Objection.

16 A. I said I don't remember all of the  
17 things that I took into consideration, but that  
18 was part of it.

19 Q. Okay. Why not just sustain the finding  
20 but issue him a less serious discipline for that  
21 finding?

22 MR. COGLIANESE: Objection.

23 A. It's what I chose to do.

24 Q. Okay. His suspension overall for three

1 instances of absence without leave was three  
2 16-hour suspensions, so a total of 48 hours. Do  
3 you remember what -- why that level of discipline  
4 and not a greater or lesser level?

5 A. I thought that was what was appropriate  
6 for those circumstances.

7 Q. Okay. Officer Kirby's discipline was  
8 issued prior to Officer Morgan's. Do you remember  
9 whether Kirby's case came up as a potential  
10 comparable for Morgan?

11 A. It may have been discussed as an  
12 example with similar rule violation.

13 Q. Okay. Officer Morgan and pretty much  
14 every other officer that I think we're going to  
15 discuss today also worked in high stress jobs. A  
16 police officer is a pretty high stress job, right?

17 A. Yes.

18 Q. Certainly Officer Morgan's job working  
19 patrol is a more dangerous job than Officer  
20 Kirby's job doing computer investigations of child  
21 pornographers.

22 MR. COGLIANESE: Objection.

23 A. Well, that's an opinion. I mean  
24 dangerous to physical health, dangerous to mental



1 health.

2 Q. I meant physically.

3 A. Yes. They're all dangerous.

4 Q. I meant physically dangerous.

5 A. Okay. You didn't -- you did not say  
6 that.

7 Q. Would you agree it's more physically  
8 dangerous than what Officer Kirby was doing?

9 A. The potential certainly there, yes.

10 Q. Okay. Did you ask Officer Morgan or  
11 any of his chain of command whether Officer Morgan  
12 may have been under any kind of stress during this  
13 time period?

14 A. I don't recall asking that question.

15 Q. Okay. Officer Morgan was fairly  
16 apologetic in his chief's hearing. He didn't --  
17 obviously, he didn't admit to doing the conduct  
18 that he was being accused of, but he did apologize  
19 to you for the inconvenience caused by his shoddy  
20 recordkeeping.

21 A. I do believe so.

22 Q. Did he seem concerned about the charges  
23 during his chief's hearing?

24 A. Officer Morgan?

1 Q. Yeah.

2 A. Yeah.

3 Q. He was at least pretty stressed out  
4 during the hearing?

5 A. Yes.

6 Q. He was like Officer Kirby was sort of  
7 throwing things out there like potential witnesses  
8 who could corroborate his story, for instance,  
9 documents that he felt like he could have been  
10 able to provide, things like that?

11 MR. COGLIANESE: Objection.

12 A. I'm not sure what the question is.

13 Q. It's okay.

14 He did admit to some misconduct in the  
15 chief's hearing, including the failure to mark in  
16 service.

17 A. Yes.

18 Q. He was apologetic about it?

19 A. I believe so.

20 Q. He sort of asked you for another chance  
21 so that he could, you know, improve his  
22 organization and that kind of thing?

23 A. If it's in the transcript, then, yes.

24 Q. Why didn't you ask Officer Morgan about

1 his stress level and his emotional state?

2 A. I don't even remember that I didn't, so  
3 I -- I wouldn't have a reason for not doing it or  
4 a reason for doing it.

5 Q. Officer Kirby unlike Officer Morgan had  
6 a prior issue of some issues about his attendance,  
7 right?

8 A. Say that again.

9 Q. Officer Kirby had issues previously  
10 about his attendance, he had been repeatedly  
11 warned about being more careful about his  
12 attendance and leave time?

13 A. Maybe.

14 MR. COGLIANESE: Objection.

15 Q. Okay.

16 A. I don't recall.

17 Q. And his chain of command noted -- it  
18 was actually Lieutenant Gardener -- I said the  
19 wrong name. But Lieutenant Gardener had noted  
20 during the investigation that Officer Kirby had  
21 expressed concerns about being overworked and they  
22 had sort of bent over backwards to make sure that  
23 it wouldn't keep happening prior to this incident.

24 MR. COGLIANESE: Objection.

1 Q. Do you remember that?

2 A. No. Not specifically.

3 Q. Okay.

4 A. But that could be.

5 Q. Okay. I think we talked a little  
6 earlier about a black officer named Randall Lyons.  
7 Do you remember Randall Lyons?

8 A. Yes.

9 Q. He's a current CPD officer, right?

10 A. Yes. I believe so.

11 Q. I think the most recent thing I saw in  
12 the news about him was that he had, like, helped  
13 pull a child out of a pond or something like that  
14 and saved the child's life or helped to do that.

15 A. He was there, yes. I don't think they  
16 ultimately were able to pull him out. He -- he  
17 got cold and got pulled out himself before he  
18 actually saved the child, but --

19 Q. Okay.

20 A. -- he attempted to.

21 Q. Okay. Do you remember there being an  
22 issue between you and -- that your executive staff  
23 about whether you were willing to congratulate  
24 Officer Lyons about that, about his attempted act

1 of heroism at least?

2 A. What do you mean by "congratulate"?

3 Q. That you had to be pressured by people  
4 in your chain of command to actually give Officer  
5 Lyons a call to thank him for his service in that  
6 instance.

7 MR. COGLIANESE: Objection.

8 A. I remember that I was told that he was  
9 very upset that I hadn't called him. And I don't  
10 know that I ever did call him. I -- I don't know  
11 who might have tried to -- maybe my PIO or  
12 somebody tried to tell me that I should call him,  
13 reach out to him or something like that because he  
14 was upset.

15 Q. Okay. You didn't -- I mean why not  
16 just -- I mean, it was a pretty high profile  
17 incident, he had done something fairly heroic,  
18 jumping into a pond to try to save a kid at risk  
19 to himself.

20 A. I --

21 Q. Wouldn't it be routine to call an  
22 officer in that situation?

23 A. It's not routine.

24 Q. No?

1 A. No.

2 Q. Okay. Randall Lyons had his own time  
3 reporting issue. I think you alluded to it  
4 earlier.

5 A. I did.

6 Q. In that situation he had actually been  
7 in 580 on administrative duty, had been relieved  
8 of duty at the time.

9 A. I don't think that he was working in  
10 the patrol office. I think he was assigned to  
11 work in the telephone reporting unit.

12 Q. Okay.

13 A. But he --

14 Q. He was relieved of duty and put on  
15 administrative assignment of some kind.

16 A. Correct.

17 Q. He reported to supervisors in that role  
18 that he was extremely uncomfortable in the  
19 assignment that he was given because it was, like,  
20 very confined and had limited lighting or  
21 something like that. Is any of this ringing a  
22 bell?

23 A. I don't recall that specific  
24 information. I --

1 Q. Would you deny it?

2 MR. COGLIANESE: Hold on. Let her  
3 finish.

4 Q. I'm sorry. Go ahead.

5 MR. VARDARO: Rich, I'm just trying to  
6 move things along. I'm not trying to interrupt  
7 her, but she's got these long pauses.

8 A. I'm trying to recall things that  
9 happened years ago.

10 Q. I'm not purposefully trying to  
11 interrupt you. I thought you were just sort of  
12 done with that part of your answer. So go ahead.

13 A. I don't recall what concerns that he  
14 might have had. I just know that he wasn't  
15 working in the patrol office and that he was  
16 working in the telephone reporting unit which is a  
17 more out of the public eye place. I don't recall  
18 if that was by choice or by -- you know, by design  
19 by the supervisor.

20 Q. Okay.

21 A. I just don't recall that.

22 Q. And you don't remember that Officer  
23 Lyons had reported to supervisors that because of  
24 a severe psychological condition he had, he was

1 really struggling in the assignment that he was on  
2 and that he was actually experiencing suicidal  
3 thoughts?

4 MR. COGLIANESE: Objection.

5 A. I think when he came to see me, he  
6 expressed how troubled he was. I don't remember  
7 it being suicidal, but --

8 Q. You were aware -- I'm sorry. Go ahead.

9 A. Go ahead.

10 Q. You were aware that Officer Lyons was a  
11 military veteran and had some psychological  
12 conditions related to that service?

13 A. I might have been at the time.

14 Q. Okay. Actual, unlike Officer Kirby's  
15 situation, actual diagnosed psychological  
16 conditions?

17 MR. COGLIANESE: Objection.

18 A. If that was brought to my attention,  
19 then I was aware of it at the time.

20 Q. Okay. And his explanation for why he  
21 had stopped coming to work in his administrative  
22 assignment was that he was unable to cope with the  
23 assignment psychologically and was experiencing  
24 suicidal thoughts. Wasn't that his defense?



1 A. It could be. I --

2 Q. Okay.

3 A. -- just don't recall.

4 Q. Officer Lyons received an 80-hour  
5 suspension for the time issue related to his  
6 issue, right?

7 A. Sounds familiar.

8 Q. Okay. Do you remember why he received  
9 a greater suspension than Officer Kirby?

10 A. I don't recall enough of the specific  
11 facts and numbers and all that kind of thing to do  
12 that. He had been involved in another incident  
13 involving judgment and decision making and all  
14 that that made -- may have played into that. But  
15 I don't -- I don't recall any specific reason.

16 Q. Okay. Do you remember whether Kirby's  
17 case was brought up as a competitor for Lyon's?

18 A. If it had happened prior to then, it  
19 might very well have.

20 Q. I talked a little bit previously about  
21 David LaRoche.

22 A. Uh-huh.

23 Q. He's a white officer?

24 A. Uh-huh.

1 Q. I'm sorry. You've got to give yeses or  
2 nos.

3 A. Yes.

4 Q. Doug Williams was his supervisor during  
5 the time when his disciplinary issue came up.  
6 Does that sound familiar?

7 A. Maybe. Yeah. I think that was the  
8 case.

9 Q. It was in SRB?

10 A. Yes.

11 Q. There was an incident somewhat similar  
12 to Officer Morgan's situation in the sense that  
13 there was an incident where somebody was looking  
14 for LaRoche during the time when he was supposed  
15 to be on duty and couldn't find him.

16 A. Okay.

17 Q. I'm asking you whether you remember  
18 this stuff. I --

19 A. I --

20 Q. I'm sorry that I don't put question  
21 marks at the end of all of them.

22 A. Rarely.

23 I don't recall the specific, you know,  
24 facts.

1 Q. I'll just give you a description of it  
2 and you can tell me whether this jogs your memory.  
3 LaRoche was supposed to be working a surveillance,  
4 the other officers working surveillance couldn't  
5 find him. And then because of that, Sergeant  
6 Williams started surveilling him and trying to  
7 keep track of when he was coming in and leaving  
8 versus when he was reporting coming in and leaving  
9 over several weeks.

10 A. Sounds familiar.

11 Q. And it turned out that in fact some  
12 days he wasn't coming in, that some days he was  
13 coming in very late or leaving early and reporting  
14 different hours than he was actually working, much  
15 -- many more hours than he was actually working  
16 during that several week period.

17 A. Yes. I remember there were several  
18 instances that he couldn't find him.

19 Q. Okay.

20 A. For at least some periods of the time.

21 Q. And there was an administrative  
22 investigation and it was clear during the  
23 investigation that -- first of all, he did not  
24 admit to any misconduct. Do you remember him

1 admitting to any misconduct?

2 A. I don't recall the specifics.

3 Q. Okay. The deputy chief reported to you  
4 -- this was Deputy Chief Quinlan, Deputy Chief  
5 reported to you that his behavior was done with  
6 deliberate intent and it was not the result of  
7 carelessness or negligence and involved reporting  
8 overtime that wasn't worked and that it occurred  
9 over a lengthy time period. Any of that --

10 MR. COGLIANESE: Objection.

11 Q. -- sound familiar?

12 A. I don't remember the overtime part of  
13 it. But I'm not disputing any of that.

14 Q. Officer LaRoche received an 88-hour  
15 suspension as a result of that investigation. Do  
16 you remember why that suspension and not something  
17 more severe?

18 A. Just based on the information that I  
19 had available and other comparables as we've  
20 discussed, you know, all of the other factors that  
21 I take into consideration, I felt that was an  
22 appropriate level of corrective action.

23 Q. Unlike with Officer Morgan, in Officer  
24 LaRoche's case there was no effort to go back

1 through prior time records and figure out whether  
2 he had committed actually more misconduct than was  
3 immediately witnessed by Sergeant Williams. Do  
4 you have any knowledge of why that was?

5 MR. COGLIANESE: Objection.

6 A. No.

7 Q. Do you remember sort of understanding  
8 as part of the LaRoche discipline that the actual  
9 number of times that he reported late or left  
10 early was most likely sort of the tip of the  
11 iceberg, because all of the surveillance happened  
12 after a particular time when he was essentially  
13 caught and not being on duty, and there was no  
14 effort to go back in time and trying to figure out  
15 whether there were other instances like that?

16 MR. COGLIANESE: Objection.

17 A. I accept the fact that, you know, if  
18 what we see is happening that it could have  
19 happened before.

20 Q. Okay. Do you remember whether you  
21 added cause for dismissal as one of the charges  
22 against Officer LaRoche?

23 A. I don't believe I did.

24 Q. I think I may have asked this already.

1 LaRoche is white, right?

2 A. I believe so. Yeah.

3 Q. Do you remember discussing LaRoche's  
4 case with the safety director?

5 A. I don't recall any conversations like  
6 that.

7 Q. Okay. How about with the union other  
8 than just directly in the chief's hearing?

9 A. Not that I recall.

10 Q. And I'm sorry. Fred pointed this out  
11 for me. The LaRoche case was resolved by  
12 suspension in July of 2014, about nine months  
13 before your determination in Officer Morgan -- or  
14 your recommendation in Officer Morgan's case. Do  
15 you remember whether the LaRoche case came up as a  
16 potential comparable for Morgan?

17 A. If the rule number is the same, then,  
18 yes, it probably did.

19 Q. Does it matter the specific rule  
20 number? Is that the whole -- is it only  
21 comparable if it's the specific -- same specific  
22 rule number?

23 A. Well, that's the starting point.

24 Q. Okay.

1           A.           You know, it's easier -- not everybody  
2           always agrees on the right rule of conduct number.  
3           But generally that's where we're going to look for  
4           any other instances that were charged under the  
5           same rule.

6           Q.           Okay. Do you remember there being any  
7           discussion about why the Morgan investigation was  
8           so much more extensive in terms of its scope than  
9           the LaRoche investigation?

10                   MR. COGLIANESE: Objection.

11           A.           I don't remember any discussions along  
12           those lines.

13           Q.           Do you remember why LaRoche wasn't  
14           investigated criminally?

15           A.           I don't recall a specific date,  
16           reasoning or anything like that. I told you  
17           before that my preference is to not do criminal  
18           investigations when we think that that's still,  
19           you know, going to take care of the situation as  
20           best.

21           Q.           Okay.

22                   MR. COGLIANESE: Jeff, let's take a  
23           break when you --

24           Q.           I was going to say five minutes would

1       probably be good for everybody at this point.

2                       (A short recess is taken.)

3       BY MR. VARDARO:

4       Q.               In terms of the LaRoche investigation  
5       we were just talking about, there was no, like,  
6       loophole or problem with the evidence like you  
7       were mentioning with the Constable and Jones  
8       situation, right?

9       A.               Not that I recall.

10      Q.              I mean, in that case, Sergeant Williams  
11      had essentially directly observed LaRoche stealing  
12      time, so there wasn't really much doubt to the  
13      whole thing?

14      A.              I think LaRoche claimed that he had  
15      submitted some slips, but I'm not sure about that.

16      Q.              Okay. He was claiming that he was  
17      submitting leave slips during a period of time  
18      when Sergeant Williams was actively surveilling  
19      him for failing to show up for work which made it  
20      a really unlikely claim, right?

21      A.              I was convinced that he had done it,  
22      that's why I sustained the charge.

23      Q.              Okay. Do you remember an officer named  
24      White -- Freudian slip. His name was not White



1 Slaughter. Brett Slaughter.

2 A. I remember a case involving Brett  
3 Slaughter.

4 Q. White officer?

5 A. I believe he is.

6 Q. Okay. He was alleged to have claimed  
7 overtime or regular duty time of some kind that he  
8 had not worked while he was on an ATF task force.

9 A. I don't recall a whole lot about the  
10 overtime part of it. But I think I remember the  
11 most was that they didn't think that he was  
12 working the hours that they expected him to in the  
13 ATF office.

14 Q. "They" meaning the ATF?

15 A. Well, the division expects you to work  
16 an 8-hour tour. ATF was his supervisor at the  
17 time. So it came to light that he might have been  
18 shorting his days and was investigated for that.

19 Q. Okay. That similar to the LaRoche  
20 situation it came to light because someone at the  
21 ATF was essentially looking for him while he was  
22 supposed to be there and he wasn't there, right?

23 A. That sounds familiar.

24 Q. Okay. And his shorting of hours or

1 theft of time or whatever you want to call it was  
2 discovered directly through basically surveillance  
3 after the initial report.

4 A. I believe so.

5 Q. Okay. Do you remember how much time he  
6 was alleged to have stolen?

7 A. No.

8 Q. Do you remember that during the  
9 investigation there was additional misconduct  
10 discovered, there was some kind of pornographic  
11 material or something like that discovered in his  
12 office that he wasn't supposed to have?

13 A. I remember that they found pornographic  
14 material. I don't remember if it resulted in an  
15 actual allegation of misconduct.

16 Q. Okay.

17 A. Because I don't remember if we could  
18 prove that it was his or -- I just remember that  
19 they found that material.

20 Q. Was officer --

21 A. I don't remember the outcome.

22 Q. Oh, I'm sorry. Was Officer Slaughter  
23 terminated?

24 A. No.

1 Q. What was his discipline?

2 A. He was removed from that assignment.

3 And I don't recall what the outcome of the  
4 disciplinary case was.

5 Q. Was there a suspension?

6 A. I don't -- I just said I don't recall.

7 Q. You don't remember. Oh, I'm sorry. I  
8 just meant like, you know, you could not remember  
9 whether it was a DCC or a written reprimand or  
10 something?

11 A. I don't recall.

12 Q. You just don't remember at all what the  
13 level of discipline was?

14 A. I'm sure you have the record.

15 Q. I actually don't.

16 A. Oh.

17 Q. Do you remember any discussions with  
18 professional standards or the safety director  
19 about the level of discipline in this case?

20 MR. COGLIANESE: Objection.

21 A. I don't have any recall of it.

22 Q. Okay.

23 A. When was the hearing?

24 Q. I believe 2018 maybe.

1 A. Well, I was gone for a significant  
2 portion of 2018.

3 Q. Okay.

4 A. So --

5 Q. Do you think you were involved in  
6 Slaughter's discipline?

7 A. It's not ringing any bells.

8 Q. Okay.

9 A. I might have been. I remember being  
10 told about the case, but I don't remember holding  
11 the disciplinary hearing.

12 Q. Do you remember what deputy chief he  
13 would have been reporting up to through ATF?

14 A. I'm pretty sure it was Deputy Chief  
15 Becker.

16 Q. Okay. Is there anything else you can  
17 tell me about that case? Everything we just  
18 discussed is basically everything you remember?

19 A. I remember that the ATF was highly  
20 embarrassed by their lack of oversight over him  
21 and we threatened to not give them another task  
22 force officer because we didn't want that kind of  
23 behavior to be allowed. They admitted that they  
24 had done a very poor job of monitoring time in the

1 office and/or whatever. I believe that in that  
2 particular case there was some surveillance, yes.  
3 But it was surveillance that said you're not in  
4 the office, but I can't prove that you are not  
5 doing some other type of work, you know, that  
6 originated outside the office and you were just  
7 late getting there. That was a -- I believe an  
8 evidence problem in that particular case, and  
9 really poor oversight by the ATF.

10 Q. But at the end of the day, the CPD's  
11 conclusion was that Slaughter was guilty of some  
12 misconduct conduct related to this.

13 A. I don't recall.

14 Q. Okay.

15 A. I'm not sure if I even had the hearing  
16 because I didn't work the last two months of the  
17 year, and I was gone for almost all of August, and  
18 I don't recall when that was resolved.

19 Q. Okay. Other than the officers that we  
20 have discussed today, are you aware of any white  
21 Columbus Division of Police officers who were  
22 terminated for misreporting their hours worked or  
23 receiving pay or leave credit for hours that they  
24 didn't work?

1 MR. COGLIANESE: Objection. Go ahead.

2 A. I can't remember exactly what the  
3 charges were, but Lieutenant Brian Lance was  
4 charged with a lot of different leave issues, not  
5 being at work when he said he was at work. I  
6 believe I made a recommendation of 240-hour  
7 suspension, termination and demotion on him.

8 Q. Okay. That was his -- I'm sorry. Go  
9 ahead.

10 A. And I believe that he might have  
11 resigned prior to being fired.

12 I already talked about Troy Casner.  
13 Sergeant Moore, as you know, I believe I made a  
14 recommendation of termination and suspension for  
15 him with regard to abuse of overtime and basically  
16 stealing money that he didn't earn, didn't work.

17 Q. And a lot of other things as well.

18 A. And a lot of other things. As far as  
19 related to leave and time and overtime and theft.  
20 Officer Knode is white, I recommended termination  
21 for him for theft.

22 Q. But not for theft of time?

23 A. No. Money. Those are the ones that I  
24 recall. There may be -- well, no. I take that

1 back. I had a number of male white officers that  
2 got in trouble with being at work. Joe Hern,  
3 Steve Franchini, Richard Ptak. They basically  
4 abandoned their jobs to a large degree. But they  
5 had medical conditions so they were being covered  
6 by sick leave and/or, you know, maybe they were  
7 time -- leave without pay time, but they were  
8 marked off sick I believe. I think both Ptak and  
9 Franchini might have died after they left  
10 employment. I think they were both fired. Hern  
11 might have resigned because he was under  
12 investigation a number of times. Josh Wagner was  
13 I don't think related to time, but he had several  
14 different issues going on.

15 Sergeant -- but, yeah, Franchini and  
16 Ptak and Hern all I believe were somewhat similar  
17 in the sense that they were probably abusing sick  
18 leave and not coming to work and therefore being  
19 -- and I don't even know if -- what paid status  
20 they were in, but it was potentially under the  
21 same rule of conduct or something similar.

22 Q. What time frame are we talking about?

23 A. During my time as chief.

24 Q. Okay. And these were all guys who had

1 legitimate medical conditions -- you don't know?

2 A. Well, I think two of them were  
3 alcoholics.

4 Q. Okay.

5 A. And just weren't able to get their life  
6 turned around well enough. Here I don't know that  
7 he had a medical problem or not. I -- I just  
8 don't remember the circumstances well enough. I'd  
9 have to go back through the -- well, if they still  
10 exist. But --

11 Q. I guess I'm -- I've got to figure out  
12 what you're saying about Franchini and Ptak. Were  
13 they terminated because they had basically run out  
14 of unpaid sick leave that they could take or were  
15 they terminated because they were found to have  
16 abused sick leave?

17 A. Well, we have rules that say that you  
18 have to, you know, stay in touch. If you are on  
19 medical leave, you have to at least call HR every  
20 two weeks to say, hey, I'm still on medical leave  
21 and this is my condition and give us an update.  
22 And they were failing to follow orders. So at  
23 some point in time HR gets involved and starts  
24 talking to them to see if they're dealing with



1     their issues and yet they still can't violate the  
2     orders to, you know, stay in touch or to stay in  
3     paid status if they can and various other things.  
4     And so they weren't fired because they have a  
5     medical condition. They were I believe fired  
6     because they were failing to follow the orders  
7     related to staying -- of following orders.

8     Q.           They basically just stopped coming to  
9     work and then nobody could get in touch with them  
10    to figure out --

11    A.           Correct.

12    Q.           -- what was going on.

13    A.           Yeah.

14    Q.           And they abandoned their jobs?

15    A.           We went out to do home visits, and, you  
16    know, either they weren't home or they were home  
17    and they weren't answering the door, you know.

18    Q.           So it wasn't about officers trying to  
19    get paid for work they weren't doing or something  
20    like that. It was basically officers who just  
21    weren't coming to work anymore and weren't --

22    A.           Well, I don't recall. At some point in  
23    time they might have been trying to get paid for  
24    not working. But I just don't remember the

1 timeline. You know, oftentimes you -- if it goes  
2 that long, you were on paid time for a while and  
3 then you get off of it.

4 Q. Okay. Was it the same with Hern as  
5 with Franchini and Ptak, or is that something  
6 different?

7 A. No. It's different.

8 Q. What was Hern doing?

9 A. I don't recall. There was some  
10 misconduct on his part.

11 Q. About abuse of sick leave or --

12 A. I can't remember.

13 Q. Okay. And Hern resigned under  
14 investigation but hadn't actually been recommended  
15 for termination at that point.

16 A. I believe so.

17 Q. And Franchini and Ptak were terminated,  
18 but it was basically like --

19 A. As far as I recall.

20 Q. Did they contest the termination or did  
21 they just basically disappear?

22 A. I don't believe that they contested it  
23 much.

24 Q. Was there a chief's hearing?

1 A. To be terminated you would have to have  
2 a chief's hearing.

3 Q. Did they show up for the chief's  
4 hearing?

5 A. I just don't know that.

6 Q. Okay. You said somebody named Wagner.  
7 Did you say that that wasn't related at the time?

8 A. Yeah. I don't think that that's  
9 related to leave time.

10 Q. Okay. I'm going to jump back to the  
11 ones that I think are a little bit more closely  
12 related maybe -- maybe you think those are closely  
13 related. But Casner we talked about a little bit.  
14 There was an additional allegation about tampering  
15 with the investigation or talking to other  
16 officers about the investigation. But in addition  
17 to that, do you recall he had had also a DUI  
18 within the time frame of the lookback?

19 A. It was prior to that behavior being  
20 discovered.

21 Q. Right. But it was within the four-year  
22 window of being able to be included in  
23 disciplinary decisions?

24 A. Yeah. I don't think that he received

1 any discipline out of the DUI. Did he?

2 Q. Oh, really? I --

3 A. I don't think that he did.

4 Q. Okay.

5 A. They were -- they were -- he was found  
6 not guilty I believe in court, and so that made it  
7 really difficult to proceed administratively.

8 Q. Okay. The one you mentioned, Brian  
9 Lance that you recall he was terminated on this  
10 third incident of AWOL.

11 A. I think he was terminated. I don't  
12 think he resigned.

13 Q. Well, I mean he resigned in lieu of  
14 termination, I guess.

15 A. Okay.

16 Q. But your recommendation for his  
17 termination was after his third indent of AWOL,  
18 right?

19 A. All within a short period of time, yes.

20 Q. But they were separately investigated  
21 like they had actually disciplined him for AWOL  
22 previously twice before he was recommended for  
23 termination.

24 A. Yeah. I believe so.

1 Q. Are you -- other than the officers we  
2 already mentioned, are you aware of any black  
3 officers who had a sustained allegation of time  
4 reporting issues that were not terminated?

5 A. Do you mean --

6 MR. COGLIANESE: Objection.

7 A. -- besides Randall Lyons?

8 Q. Yes.

9 A. Not that I recall specifically.

10 Q. Okay.

11 A. I mean, understand that, you know,  
12 discipline could happen for being late by the  
13 immediate supervisor and I wouldn't know about it.

14 Q. In terms of discipline that was in  
15 front of you, though, you can't think of any other  
16 ones?

17 A. That's correct.

18 Q. Okay. How about white officers who had  
19 discipline in front of you who were not terminated  
20 for time reporting infractions besides the ones  
21 we've talked about?

22 A. Not that I recall.

23 Q. Okay. Do you remember I think we  
24 talked about Joseph Houseberg at the very

1 beginning in terms of your relationship? Do you  
2 remember an investigation of Houseberg related to  
3 special duty?

4 A. Yes.

5 Q. Houseberg was found to have made a  
6 false report regarding his special duty assignment  
7 about contact he had with a civilian; is that  
8 right?

9 A. Yes.

10 Q. All right. And it was the kind of  
11 report that it somehow caused the apartment  
12 complex involved to mistakenly believe that  
13 somebody had violated a protection order or  
14 something and they had actually started to  
15 initiate civil litigation about it; does that  
16 sound familiar?

17 A. Not a protection order. I think it was  
18 just a stay away order.

19 Q. Stay away order?

20 A. Uh-huh.

21 Q. Okay. And first of all, he was  
22 immediately fired from that special duty  
23 assignment by the apartment complex, right?

24 A. I believe so.

1 Q. Okay. And the same report that he  
2 filed actually amounted to improper use of OHLEG  
3 data from the law enforcement Gateway.

4 A. It contained information from that,  
5 yes.

6 Q. And he had given that information to a  
7 civilian, to the apartment complex.

8 A. Yes.

9 Q. Which was improper.

10 A. Correct.

11 Q. And a felony.

12 A. Well --

13 MR. COGLIANESE: Objection.

14 A. -- if it's prosecuted, then it's a  
15 felony.

16 Q. Well, it's a felony whether it's  
17 prosecuted or not. But if he was found guilty of  
18 it, he would be guilty of a felony, right?

19 MR. COGLIANESE: Objection.

20 Q. I'll withdraw that question.

21 Improper use of -- impair sharing of  
22 OHLEG data with a civilian by a police officer is  
23 a fifth degree felony in the State of Ohio?

24 MR. COGLIANESE: Objection.

1 A. There is a law like that.

2 Q. Okay. In particularly I mean there's  
3 -- I don't know if you've seen the reporting  
4 recently, there was a chief of police out of  
5 Buckeye Lake that was just indicted for a couple  
6 of those. Do you remember seeing that?

7 A. I don't.

8 Q. Okay. The luxury of not having to read  
9 the papers I guess when you're not the chief  
10 anymore.

11 In the packet, the internal affairs  
12 packet and the chain of command materials for the  
13 Houseberg investigation there's a notation that  
14 said that after consulting with Jeff Furbee, there  
15 was an indication that this was not the kind of  
16 OHLEG violation that would likely to be  
17 prosecuted. Do you remember that?

18 A. Not specifically. But I don't doubt  
19 that you've read that.

20 Q. Do you remember that there was no  
21 actual criminal investigation of Joe Houseberg?

22 A. I don't recall a criminal investigation  
23 being conducted by anybody about that particular  
24 violation.



1 Q. Okay. And he admitted to the  
2 violation, I mean it was clear that there was no  
3 question that he had shared OHLEG data with a  
4 civilian.

5 A. Correct.

6 Q. Okay. He received a sustained  
7 allegation of untruthful after your chief's  
8 hearing; is that right?

9 A. After my chief's hearing?

10 Q. You sustained -- there was a charge of  
11 untruthful against him.

12 A. You said after my hearing.

13 Q. And then after your hearing you  
14 sustained -- you recommended sustaining the  
15 charge.

16 A. I thought I changed the rule of  
17 conduct.

18 Q. Okay. Can I get 24.

19 Let me ask before we get into that. Do  
20 you remember why you would have changed the rule  
21 of conduct?

22 A. Because I thought that was the most  
23 appropriate way of handling that particular  
24 situation.

1 Q. Okay. What did you change it --

2 A. He was classified as making a  
3 misrepresentation of the information on the report  
4 rather than untruthfulness.

5 Q. Okay. Is that a less serious charge?

6 A. It was handled as a less serious rule  
7 of conduct. With a 136, there's -- that's the  
8 unbecoming conduct. He was untruthful to the  
9 people that he worked for at the apartment  
10 complex. It wasn't a matter of being untruthful  
11 to the Division of Police.

12 Q. Okay. But before we go further down  
13 this line, let me just give you the packet. This  
14 has been marked as Plaintiff's Exhibit 24. If you  
15 flip, one, two -- about three pages in is your  
16 recommendation to Director Speaks on Houseberg's  
17 case. Do you see it?

18 - - - - -

19 Thereupon, Plaintiff's Exhibit 24 is  
20 marked for purposes of identification.

21 - - - - -

22 A. Yes.

23 Q. On the second page it appears to me  
24 that you -- the charge says, "You are hereby

1 charged with violating Rule 1:15(A)(5) General  
2 Requirements, which states, 'Division personnel  
3 shall be truthful at all times.'" And it says,  
4 "Specification I+II: Sustained." Is that not a  
5 sustained untruthful?

6 A. Well, you have to keep reading.

7 Q. Okay. What does that mean, the next  
8 notation?

9 A. It says my recommendation is that it's  
10 an 80-hour suspension for violating rule of  
11 conduct 1.36.

12 Q. Okay. So basically you're saying he  
13 did the thing that he was accused of, but the rule  
14 of conduct is as you described.

15 A. Yeah.

16 Q. It's different in your mind -- well,  
17 first of all, do you know, does a finding like  
18 this get an officer put on a 1010 list?

19 A. No.

20 Q. Okay. In your view, it's different for  
21 the officer to falsely report something to his  
22 special duty employer than it is to falsely report  
23 it to the division.

24 A. Well, there's a distinction.

1 MR. COGLIANESE: Objection.

2 Q. Okay. Less serious to report it to a  
3 private person than to the public.

4 A. It's serious any time it's -- you know,  
5 the rule is to be truthful at all times, it  
6 doesn't specify just to division personnel. We  
7 hope that you're honest and have integrity in all  
8 cases. But in this particular case, he ended up  
9 giving bad information to his special duty  
10 employer.

11 Q. False information.

12 A. Yeah.

13 Q. Information that wasn't just bad, he  
14 knew it was not true.

15 A. Well, I don't know if he knew that it  
16 -- yeah.

17 Q. Do you remember what the report was  
18 about?

19 A. He said that he talked to somebody, so,  
20 yes, that was wrong.

21 Q. Yeah. He said that he -- rather than  
22 just seeing somebody drive by, he had actually  
23 stopped the car and done some work that he didn't  
24 actually do which is to stop the car and --

1 A. Yeah.

2 Q. -- talk to the person.

3 A. Yeah.

4 Q. And confirm their identity.

5 A. I remember that now.

6 Q. Okay. So obviously something that he  
7 intentionally lied about within the report.

8 A. Correct.

9 MR. COGLIANESE: Objection.

10 Q. And again as with the Kirby case, this  
11 is a situation where you've got an officer who's  
12 found in an investigation to have lied, but in  
13 terms of the prosecutor's obligation to inform  
14 criminal defendants of untruthfulness, a criminal  
15 defendant being investigated by Officer Houseberg  
16 would not be provided with the information.

17 MR. COGLIANESE: Objection.

18 A. What was the question?

19 Q. This is another situation where you  
20 have an officer who you know lied but you're not  
21 informing the prosecutor of that?

22 MR. COGLIANESE: Objection.

23 Q. Right?

24 A. I wouldn't describe it that way. I

1 decided not to sustain a charge of untruthfulness.

2 It's not a matter of me not telling the  
3 prosecutor.

4 Q. Okay. Did you tell the prosecutor  
5 about this one?

6 A. I don't believe that I did.

7 Q. Okay. And you didn't put him on the  
8 1010 list?

9 A. Correct.

10 Q. Okay. Why wasn't Officer Houseberg  
11 terminated?

12 A. Because I didn't think that that was  
13 the level of discipline that was appropriate for  
14 this instance.

15 Q. Why not?

16 A. Because I didn't think it was  
17 appropriate.

18 Q. Okay. No reasoning, no, you know,  
19 nothing -- what makes this case less serious than  
20 Officer Morgan's case in your mind?

21 MR. COGLIANESE: Objection.

22 A. Well, to start off with, this was a  
23 one-time incident. It was giving the wrong  
24 information -- untruthful information if you will

1 in one particular instance.

2 Q. Okay. Do you know whether in this  
3 investigation anybody pulled the rest of Officer  
4 Houseberg's reports to this special duty employer  
5 to determine whether they may have been other  
6 similar instances?

7 A. I do not know.

8 Q. Okay. Unlike in Officer Morgan's case  
9 where all of his time was pulled?

10 MR. COGLIANESE: Objection.

11 A. I don't know.

12 Q. Okay. Do you know -- first of all, is  
13 Officer Houseberg a white officer?

14 A. Yes.

15 Q. Okay. Do you remember an officer named  
16 Andrew Hawkins?

17 A. I know of -- I know of him.

18 Q. Okay. White officer?

19 A. Yes.

20 Q. Okay. Do you recall that there was an  
21 investigation of Officer Hawkins related to an  
22 off-duty stop of civilians?

23 A. Well, I don't know about calling it a  
24 stop. But there was an incident involving him off

1 duty and civilian.

2 Q. Okay. Well, what do you remember about  
3 that incident?

4 A. His wife called him very upset about  
5 something that had happened while she was I  
6 believe shopping. And he misconstrued it it  
7 sounds like or she gave him bad information, I'm  
8 not sure which. But he believed that she was in  
9 some sort of danger or, you know, facing harm or  
10 some type of a volatile situation, and he  
11 responded to her location and found I think two  
12 men that he thought were involved with her  
13 situation. And I believe that he, you know,  
14 threatened them. I'm not sure if he -- he might  
15 have pulled his gun and tried to keep them there  
16 until -- I think maybe he might have called the  
17 Sheriff's Office or something like that, but I  
18 don't remember all the particulars.

19 Q. Okay. Do you remember that the actual  
20 incident that his wife was calling him about was  
21 she was in the parking lot and the guys had opened  
22 their car door and dinged her car door with their  
23 door and then drove away without exchanging  
24 information?



1           A.           I remember that it was something that  
2           was totally blown up. And I don't remember what  
3           she told him. But I remember that he perceived it  
4           as something far worse than it actually was.

5           Q.           Okay. And do you remember that he told  
6           Sergeant Decker, who conducted his internal  
7           affairs investigation, that he believed his wife  
8           might have been kidnapped and that this somehow  
9           justified him stopping these civilians on the  
10          road?

11          A.           I can't remember what words he used  
12          exactly. But I know that he felt that she was in  
13          some sort of danger.

14          Q.           Okay. And Sergeant Decker's conclusion  
15          was that was not a reasonable reaction to this  
16          situation, considering that there was, like, 30 or  
17          40 seconds between him getting the call from his  
18          wife and coming into contact with these guys?  
19          There wasn't, like, possibly enough time for  
20          somebody to grab her and put her in a car or  
21          something like that?

22          A.           I don't remember Sergeant Decker's  
23          words to that effect. But I think that most of us  
24          felt that.

1 Q. Yeah. And in particular, also there  
2 was reason to believe that even Officer Hawkins  
3 didn't actually believe that his wife had  
4 potentially been kidnapped or harmed because he  
5 was yelling at these guys about doing a hit skip  
6 or a hit and run, not about kidnapping somebody or  
7 hurting somebody.

8 A. Is that a question?

9 Q. I'm asking you whether you remember  
10 that?

11 A. Not particularly.

12 Q. Okay. But you wouldn't dispute it?

13 A. No.

14 Q. Okay. Do you remember that this was a  
15 very widely reported incident in the media?

16 A. I don't remember how widely.

17 Q. There was news coverage, though.

18 A. Okay.

19 Q. Right?

20 A. I can't remember anything specific on  
21 that.

22 Q. Okay. Do you remember that Officer  
23 Hawkins pled guilty to criminal charges based on  
24 this incident?

1 A. That sounds familiar, maybe a  
2 disorderly conduct or something.

3 Q. I think it was actually an attempted  
4 unlawful restraint. Does this sound right or --

5 A. Could be. You've got the paperwork.

6 Q. Do you remember that once Officer  
7 Hawkins -- well, I'll just represent to you once  
8 Officer Hawkins pled guilty to the charges against  
9 him, he was immediately restored to active duty  
10 after having been relieved of his assignment prior  
11 to that.

12 A. Do I recall that?

13 Q. I'm representing to you that that  
14 happened. I'm just asking do you recall being  
15 involved in that or aware of that?

16 A. No.

17 Q. Okay. Can you explain why he would be  
18 restored to active duty before the investigation  
19 was concluded?

20 A. What is --

21 MR. COGLIANESE: Objection.

22 A. -- the -- what is the level of  
23 conviction?

24 Q. It was a misdemeanor. Does that

1 matter?

2 A. Yes.

3 Q. So if it's a misdemeanor and not a  
4 felony, that's automatically back to duty.

5 A. Well, if it's a felony, he can't be a  
6 police officer.

7 Q. Okay.

8 A. So it's an automatic.

9 Q. Okay.

10 A. If it's a misdemeanor, then it's taken  
11 into consideration. But we've had any number of  
12 officers charged with MIs that have not been  
13 fired. OVI, for instance.

14 Q. Okay.

15 A. So there's no reason to believe  
16 necessarily that a conviction of a misdemeanor  
17 would be resulting in a termination.

18 Q. Okay. Officer Hawkins received a  
19 40-hour suspension for this incident. Do you have  
20 recollection of why that level of discipline was  
21 chosen compared to something more serious or  
22 termination?

23 A. It's a misdemeanor conviction, so I  
24 look at what other misdemeanor convictions we have

1 and the circumstance of the case. And I know  
2 previously mentioned Officer Lyons had been  
3 involved in an off-duty incident, pulling a gun  
4 and pointing it at a citizen and scaring her half  
5 to death and waiving it in front of her children.  
6 And I don't remember what the outcome of his case  
7 was, but I know that that was something that was  
8 taken into consideration.

9 Q. Just to remind you, Officer Lyons got  
10 80 hours --

11 A. Okay.

12 Q. -- double the suspension that Officer  
13 Hawkins got. Does that tell you any more about  
14 why you gave Hawkins what you gave him or  
15 recommended what you recommended?

16 A. Well, I based it based on the fact that  
17 I thought that the 40 hours was appropriate for  
18 the circumstances, just like I did for Officer  
19 Lyons.

20 Q. The Lyons situations that you just  
21 mentioned, Officer Lyons had actually been  
22 directly involved in the accident that resulted in  
23 the stop that he made, right?

24 A. What are you asking?

1 Q. Officer Hawkins, he was told about an  
2 incident and then basically chased these guys down  
3 without proper authority to do that. Whereas,  
4 Officer Lyons personally witnessed a potential  
5 crime and therefore had authority to make the  
6 stop, right?

7 A. That was his interpretation --

8 MR. COGLIANESE: Objection.

9 A. -- of it, yes.

10 Q. Okay. That was also Jeff Furbee's  
11 interpretation of it, right?

12 MR. COGLIANESE: Objection. Don't --  
13 don't answer what Furbee told you.

14 MR. VARDARO: It's been -- I mean, it's  
15 in the public records that we were provided about  
16 Officer Lyons.

17 MR. COGLIANESE: You're asking her to  
18 tell you what Furbee told her.

19 MR. VARDARO: The department's already  
20 disclosed it in public records.

21 A. I don't recall the conversation.

22 Q. Officer Lyons wasn't subjected to a  
23 criminal investigation unlike Hawkins who was  
24 criminally convicted, right?

1 A. You have better records than I do.

2 Q. Okay. You just don't remember.

3 A. I don't remember.

4 Q. Okay. Do you remember that the Officer  
5 Lyons situation was he was driving with a woman  
6 and a child in his car and the person that he was  
7 accused of this conduct toward had actually run  
8 into his car and he believed that it might have  
9 been on purpose?

10 MR. COGLIANESE: Objection.

11 Q. Clipped his mirror or something like  
12 that.

13 A. I think that was the claim.

14 Q. Okay. And it was confirmed that there  
15 was contact between the cars at least.

16 A. Could be.

17 Q. Okay. Officer Lyons I'll represent to  
18 you was never charged with anything, never  
19 convicted of anything in terms of the criminal  
20 process. He was relieved of duty for the entire  
21 course of his investigation, unlike Officer  
22 Hawkins. Can you explain that?

23 MR. COGLIANESE: Objection.

24 A. I don't know what the reasoning was.

1 Q. Okay. Was it your reasoning --

2 A. But I don't know that I made that  
3 decision.

4 Q. Okay. Who would have made the  
5 decision?

6 A. Immediate supervisors have the ability  
7 to relieve somebody of duty and deputy chiefs can  
8 put somebody back to work after being relieved of  
9 duty, sometimes commanders can. So I don't know  
10 where that decision was made.

11 Q. Okay. Officer Lyons had made quite an  
12 issue of the fact that he was being kept in  
13 administrative duty for as long as he was, right?  
14 I mean, it had been grieved through the union, it  
15 resulted in a federal lawsuit. Is any of this  
16 ringing a bell?

17 A. Now that you say something about that,  
18 I think that he and Jones and Constable are all  
19 part of one. But I haven't heard much about that  
20 particular lawsuit.

21 Q. Okay. But at the time, you don't  
22 remember being aware of a controversy over Lyons  
23 being kept in an administrative duty as long as he  
24 was?



1 A. I'm saying I don't recall that now.

2 Q. Okay. Do you also remember an  
3 investigation of Officer Hawkins while he was  
4 under investigation for the improper -- for that  
5 -- the situation we just described where he  
6 improperly handled an OVI arrest?

7 A. You're going to have to refresh my  
8 memory on that one.

9 Q. He was a field training officer, and he  
10 and his trainee had been called in to help with an  
11 OVI situation involving a Hispanic male and ended  
12 up -- he ended up being removed from the field  
13 training officer program as a result of it.

14 A. I don't remember the details about  
15 that.

16 Q. I'll tell you a little bit more about  
17 it, see if I can jog your memory.

18 He actually failed to investigate the  
19 guy for OVI, even though it was obvious that he  
20 was the person driving the car and he was  
21 extremely intoxicated and had been involved in a  
22 hit and run. They put the guy in the back of the  
23 cruiser without putting his seat belt on and he  
24 was flailing all around the cruiser and falling

1 down and stuff while they were driving. He ended  
2 up vomiting and defecating in the cruiser, and  
3 Hawkins was accused of taking pictures of it and  
4 distributing it to other officers. Does any of  
5 that familiar?

6 A. Was he departmentally charged?

7 Q. I -- that, I don't know.

8 A. Was he given a written reprimand?

9 Q. I'm asking you whether you remember it.

10 A. I don't remember dealing with the  
11 disciplinary case involving that --

12 Q. Okay.

13 A. -- set of circumstances. I'm not  
14 saying I didn't, I just don't recall it.

15 Q. If it happened during the course of the  
16 stop investigation, the investigation resulting in  
17 his criminal charge or resulting from his criminal  
18 charge, would you have been informed of it at the  
19 time of your chief's hearing in terms of his  
20 active discipline?

21 MR. COGLIANESE: Objection. Go ahead.

22 A. I don't know. I can't recall.

23 Q. Okay.

24 A. It's just not sounding familiar to me.

1 Q. You do remember the Eric Moore  
2 investigation, the one where he was terminated and  
3 then brought back after arbitration?

4 A. I do.

5 Q. Okay. And you remember also  
6 recommending the termination of Melissa McFadden  
7 related to EEO violations?

8 A. I do.

9 Q. Okay. Officer Moore, Sergeant Moore a  
10 white officer. McFadden was black, correct?

11 A. Yes.

12 Q. Both officers were investigated for  
13 allegedly making racially inappropriate remarks,  
14 right?

15 A. Not -- Sergeant Moore's allegation of  
16 making racially charged remarks was different than  
17 Lieutenant McFadden's. And Lieutenant McFadden  
18 was alleged to have engaged in a pattern of that.

19 Q. Okay. But they were both accused of  
20 making racially inappropriate remarks.

21 A. No.

22 MR. COGLIANESE: Objection.

23 A. I believe that Lieutenant McFadden was  
24 charged with making discriminatory -- not just

1 racially inappropriate, but discriminatory  
2 remarks.

3 Q. But the remarks were also racially  
4 inappropriate. I mean, depending on -- the label  
5 is fair to put on that in addition to whatever  
6 other label you want to add to it.

7 MR. COGLIANESE: Objection.

8 Q. Let me put it this way before you  
9 answer: I understand there are differences  
10 between the two cases and I want to ask those  
11 differences.

12 A. Okay.

13 Q. I'm just asking about a similarity.  
14 Both of these supervisors were alleged to have  
15 made racial remarks of some kind, right?

16 MR. COGLIANESE: Objection.

17 A. That's one way of phrasing it if you  
18 want to. But there's a great distinction between  
19 the behavior that they each were accused of.

20 Q. Okay. Well, Sergeant Moore's remarks  
21 that he was alleged to have made involved making  
22 violent threats toward black officers, right?

23 A. That was an allegation that was not  
24 sustained.

1 Q. Okay. But it was clear in reviewing  
2 the investigation that there were corroborated  
3 allegations of him if not making death threats  
4 towards these officers, at least threatening to  
5 beat them up.

6 MR. COGLIANESE: Objection.

7 A. The allegation was not sustained.

8 Q. Okay. But you read the investigation,  
9 right? You read it pretty recently. We had a  
10 deposition about this last month.

11 A. The allegation was not sustained.

12 Q. You're allowed to overrule and not  
13 sustain allegations, right?

14 A. Yes.

15 Q. Okay. You decided not to sustain the  
16 allegation based on the recommendation of your  
17 chain of command and IA, right?

18 A. Based on all the evidence.

19 Q. Okay. The evidence included multiple  
20 officers confirming that Sergeant Moore used  
21 racial slurs and used them in a context of  
22 threatening to beat up or further harm black  
23 officers.

24 A. I'm not going to agree to that --

1 MR. COGLIANESE: Objection.

2 A. -- depiction of that.

3 Q. Okay. The allegations against  
4 lieutenant --

5 (A discussion is held off record.)

6 BY MR. VARDARO:

7 Q. The allegations against Lieutenant  
8 McFadden did not involve any allegation that she  
9 had made any threat of violence toward any  
10 officers based on race, not even alleged.

11 MR. COGLIANESE: Objection.

12 A. Not that I recall.

13 Q. Okay. You do remember that there were  
14 officers who told internal affairs that they  
15 directly heard Eric Moore make violent threats  
16 toward black officers.

17 A. I know that the allegation was made.

18 Q. Okay. And you know that multiple  
19 officers who Sergeant Decker interviewed confirmed  
20 that allegation.

21 A. I don't know what you mean by  
22 "multiple," so --

23 Q. Well, officer --

24 A. More than one?

1 Q. Yes, more than one. That's what  
2 multiple means.

3 A. I believe that that might be the case  
4 that there was more than one.

5 Q. Okay. Is there a difference between  
6 multiple officers saying the same type of thing  
7 and corroboration?

8 A. It is not necessarily the same, but it  
9 can be.

10 Q. Okay. Well, in this case Officer  
11 Serrell accused Eric Moore of making violent  
12 threats toward black officers and using racial  
13 slurs in that conversation. And another officer  
14 said he wasn't sure if it was a death threat, but  
15 he definitely used a racial slur and said that he  
16 was going to beat up a black officer named Cornett  
17 who was black.

18 A. What's the question?

19 Q. I'm asking you whether you agree with  
20 that.

21 A. Whether I agree --

22 MR. COGLIANESE: Objection.

23 A. -- with what?

24 Q. The fact that another officer confirmed

1 Officer Serrell's allegation that Sergeant Moore  
2 made a violent threat toward Eric Cornett, a black  
3 officer.

4 A. I'm not denying anything that was in  
5 the investigation --

6 Q. Okay.

7 A. -- that was said.

8 Q. Well, the reason I'm asking it is I  
9 asked you whether there was a corroborated  
10 allegation of a violent racial threat by Eric  
11 Moore, and you said you weren't going to admit to  
12 that because you didn't sustain the allegation.

13 A. I don't think that's how you phrased  
14 it.

15 Q. Okay. So if I phrase it that way, then  
16 that is accurate in terms of the Moore  
17 investigation?

18 MR. COGLIANESE: Objection.

19 A. Corroboration in my opinion means that  
20 the stories match and are contributory towards  
21 believing that a certain thing did occur. Stories  
22 that are similar that may or may not match up on  
23 certain times may or may not be corroborative. So  
24 it's just that word that I'm, you know --



1 Q. Okay.

2 A. I don't know -- like I said, statements  
3 are the statements, the investigation is there.

4 Q. Okay. So you agree with me that  
5 multiple officers reported in the Eric Moore  
6 investigation that Eric Moore made violent racial  
7 threats toward another CPD officer?

8 MR. COGLIANESE: Objection.

9 A. The investigation has statements from  
10 those people that alleged what they said.

11 Q. Is that a yes? Can you answer my  
12 question yes or no?

13 A. Well, the investigation contains all of  
14 that information, so --

15 Q. Including information that multiple  
16 officers --

17 A. I --

18 Q. -- reported that --

19 A. I don't --

20 Q. -- Eric Moore made violent racial  
21 threats toward another CPD officer.

22 A. I don't recall what they specifically  
23 said. So if I have to take your word for what it  
24 says specifically, then you can read it to me or

1 point it to me and then I'll say yes. But I don't  
2 recall exactly what was said in that investigation  
3 and by how many people.

4 Q. Okay. I mean I assume, I hope, you  
5 haven't had too many investigations where your  
6 officers are accusing another officer of making  
7 violent racial threats toward another officer.

8 MR. COGLIANESE: Objection. Jeff, come  
9 on.

10 MR. VARDARO: Please stop with the  
11 speaking off objections, Rich. I'm trying to  
12 move --

13 MR. COGLIANESE: Please stop haranguing  
14 the witness.

15 A. What's the question?

16 Q. Is there some reason that you can't  
17 remember this investigation? We talked about it a  
18 month ago --

19 A. It happened a long time ago.

20 Q. -- in great detail.

21 Sergeant Moore's conduct also involved  
22 directly taking employment action against black  
23 officers because they participated in internal  
24 affairs investigation against him, correct?

1 MR. COGLIANESE: Objection.

2 A. I don't recall what you're talking  
3 about.

4 Q. Do you remember that he confronted  
5 Whitney Lancaster, a black officer, about not  
6 taking a narcotics job, and he had made some  
7 threatening statements and text messages about  
8 Carl Shaw about the same narcotics job, and he  
9 admitted in the internal affairs investigation  
10 that he did that because they had called him a  
11 racist in an internal affairs investigation?

12 MR. COGLIANESE: Objection.

13 A. That sounds familiar, yeah.

14 Q. Okay. There was no allegation that  
15 Lieutenant McFadden had directly taken action  
16 against a white officer because of some racial --  
17 some conduct that they engaged in during the  
18 internal affairs investigation?

19 A. Not --

20 Q. Or a black officer? She didn't  
21 retaliate against anybody for participating in her  
22 investigation that you know of?

23 A. Correct.

24 Q. And as I said, Sergeant Moore admitted

1       that retaliation, Lieutenant McFadden didn't admit  
2       to any misconduct.

3       A.           Correct.

4       Q.           There was evidence that Sergeant Moore  
5       may have violated some federal weapons laws during  
6       his investigation. Do you remember that?

7       A.           I remember that coming up.

8       Q.           Okay. And that nothing like that  
9       involved in Lieutenant McFadden's investigation.

10      A.           Correct.

11      Q.           Sergeant Moore was directly untruthful  
12      to you about his involvement in a hiring process  
13      for that same narcotics job about who had passed  
14      on the job and who hadn't.

15      A.           Say that again.

16      Q.           Sergeant Moore was directly untruthful  
17      to you about the narcotics position that he was  
18      hiring for.

19      A.           In what way?

20      Q.           He told you that all of the officers  
21      involved in the hiring process had passed on the  
22      job.

23      A.           Did he tell me that?

24      Q.           Yes. In a report to you.

1 A. Yeah. I think that's how he  
2 represented it. I -- I can't remember very well.

3 Q. Well, it turned out not to be true. He  
4 was actually told in particular Carl Shaw could  
5 not have passed to him because he was supposed to  
6 not even be talking to Carl Shaw about it.

7 A. Okay.

8 Q. Lieutenant McFadden was not charged  
9 with untruthfulness or accused in any  
10 untruthfulness in her investigation, right?

11 MR. COGLIANESE: Objection.

12 A. During the investigation of the EEO  
13 stuff, there was no allegation brought forward  
14 about an untruthfulness.

15 Q. Sergeant Moore was found to have  
16 violated a direct report related to the  
17 investigation, the no contact order with respect  
18 to Whitney Lancaster. Do you remember that?

19 A. I believe that's true.

20 Q. Lieutenant McFadden had no  
21 insubordination or charge against her in her  
22 investigation.

23 A. I believe that's true.

24 Q. Right. Sergeant Moore was never

1 relieved of his assignment or relieved of duty  
2 until his sustained IA investigation concluded,  
3 correct?

4 MR. COGLIANESE: Objection.

5 A. I believe that's been addressed.

6 Q. And that's correct, right? I mean --

7 A. I take your word for it.

8 Q. Okay. I mean, you know that he was not  
9 relieved of duty until after the IA investigation  
10 was over.

11 A. I don't recall that specifically. I've  
12 been told that a number of times by you and  
13 others.

14 Q. Okay. You have no reason to doubt it.

15 A. No.

16 Q. Okay. Lieutenant McFadden you removed  
17 from supervision before her first interview in the  
18 internal affairs investigation.

19 A. She was not relieved of duty.

20 Q. I didn't say relieved of duty.

21 A. I know, but she wasn't relieved of  
22 supervision. She was relieved of assignment.

23 Q. Immediately before her first internal  
24 affairs interview, correct?

1 A. Shortly after the allegations came  
2 forth, she was relieved of her assignment.

3 Q. Right.

4 A. Not relieved of supervision.

5 Q. Well, she wasn't supervising anybody  
6 any more because she was working in the  
7 property room.

8 MR. COGLIANESE: Objection.

9 Q. Right?

10 A. She wasn't relieved of her  
11 responsibility as a supervisor.

12 Q. But she was relieved of the practical  
13 responsibility of supervising any human being?

14 MR. COGLIANESE: Objection.

15 A. I wouldn't say that.

16 Q. Who was she supervising in the property  
17 room?

18 A. Any officer that came in there would be  
19 subject to whatever supervisory decision that she  
20 made.

21 Q. Okay. She didn't have any direct  
22 reports anymore?

23 A. To my knowledge, that's correct.

24 Q. Okay. Sergeant Moore never faced any

1 departmental charges for any of his racial  
2 remarks, all the departmental charges were about  
3 his property allegations, correct?

4 MR. COGLIANESE: Objection.

5 A. I believe that's correct. I don't  
6 recall if it was a departmental charge that got  
7 dropped down to a written reprimand for the one  
8 that was sustained.

9 Q. Okay. Lieutenant McFadden you  
10 recommended for termination.

11 A. Correct.

12 Q. All right. The safety director  
13 overtured it.

14 A. Correct.

15 Q. Okay. You remember an officer named  
16 Jesse Perkins?

17 A. I do.

18 Q. White officer?

19 A. Uh-huh. Yes.

20 Q. He was found through an internal  
21 affairs -- actually, through a -- yeah, through an  
22 internal affairs investigation to have used  
23 excessive force against a civilian, hit him over  
24 the head with a baton, right?



1 A. Yes.

2 Q. And he lied about it directly to his  
3 sergeant after the incident.

4 A. Right after the incident.

5 Q. Okay. And he later admitted to the  
6 untruthfulness.

7 A. Within a couple hours.

8 Q. Okay. His allegation -- his misconduct  
9 involved likely a violation of constitutional  
10 rights of the civilian.

11 MR. COGLIANESE: Objection.

12 Q. Right?

13 A. Say that again.

14 Q. Hitting somebody over the head with a  
15 baton without cause, without proper cause would  
16 violate that person's constitutional rights to be  
17 free of excessive force.

18 MR. COGLIANESE: Objection.

19 A. If it was found to be unconstitutional  
20 use of force, yes.

21 Q. Okay. I mean your department concluded  
22 and you agreed that this was an excessive use of  
23 force against a civilian, right?

24 A. Correct.

1 Q. And that violated -- that likely  
2 violated that person's constitutional rights.

3 MR. COGLIANESE: Objection. Legal  
4 conclusions. Come on.

5 Q. You --

6 A. We don't find people guilty of  
7 violating the constitutional right. We find them  
8 guilty of violating our rules of conduct.  
9 Sometimes those coincide.

10 Q. Okay. You've been trained extensively  
11 in constitutional rights of civilians in your long  
12 police career, correct?

13 A. Yeah. However you want to describe  
14 extensively.

15 Q. I mean, all of your officers in the  
16 division of police are trained in what does and  
17 doesn't violate the constitutional rights of  
18 civilians with respect to searches, with respect  
19 to seizures --

20 A. Sure.

21 Q. -- with respect to excessive force, all  
22 of that stuff, that training is given as a basic  
23 element of police procedure, right?

24 A. Yes.

1 Q. So you know that using excessive force  
2 against a civilian violates their constitutional  
3 rights.

4 MR. COGLIANESE: Objection. She's not  
5 a lawyer.

6 Q. Don't you --

7 A. I know that it could be a  
8 constitutional violation. It's not always  
9 perceived that way based on the circumstances.  
10 And just because we rule it to be outside doesn't  
11 always mean that it would be found to be  
12 unconstitutional in a court of law.

13 Q. Okay. Is there any doubt in this  
14 situation involving Jesse Perkins that his use of  
15 excessive physical force against this civilian  
16 would have violated this person's constitutional  
17 rights?

18 MR. COGLIANESE: Objection. This calls  
19 for a legal conclusion.

20 A. Ask the question again.

21 Q. Did you have any doubt that this use of  
22 force by Officer Perkins violated that civilian's  
23 constitutional rights?

24 MR. COGLIANESE: Objection.

1 Q. To hit them over the head with a baton  
2 in a situation that didn't call for it.

3 MR. COGLIANESE: Objection.

4 A. It certainly could be perceived that  
5 way.

6 Q. You're aware there was a lawsuit about  
7 that use of force.

8 A. I'm not recalling that part.

9 Q. Okay. In Officer Perkins' case when  
10 the departmental charges came to you for your --  
11 prior to the chief's hearing, did you add cause  
12 for dismissal to the charges against Officer  
13 Perkins?

14 A. Not that I'm aware of.

15 Q. Okay. Any reason why?

16 A. No.

17 Q. Okay. Officer Perkins was recommended  
18 for termination -- Officer Perkins was recommended  
19 for termination by you and then was brought back  
20 to work with a 240-hour suspension by the safety  
21 director; does that sound right?

22 A. Uh-huh. Yes.

23 Q. Do you have any understanding of why  
24 that case was settled?

1       A.           I believe that it was determined that  
2       it would be possible to allow him to continue his  
3       career.

4       Q.           Okay. How was that determined?

5       A.           Well, by the director of public safety.

6       Q.           Okay. Well, where did you get the  
7       understanding I guess is what I'm sort of asking  
8       you?

9       A.           If he didn't fire him, he must have  
10      thought that he had some value.

11      Q.           Well, does Director Speaks consult with  
12      you about that, returning that officer to your  
13      employment?

14      A.           I don't remember if I had direct  
15      communication with him or not. I might very well  
16      have.

17      Q.           Okay. I mean, it would be your  
18      typical --

19      A.           I don't know if I reached out to him or  
20      I reached out --

21                   MR. COGLIANESE: Hold on. She's added  
22      to her answer, Rich.

23                   MR. VARDARO: I'm not intentionally  
24      doing it.

1 MR. COGLIANESE: You seem to be doing a  
2 lot of it. Whether it's intentional or not, just  
3 let her finish her answers.

4 BY MR. VARDARO:

5 Q. Do you remember any situations while  
6 you were chief of police where you recommended  
7 somebody for termination and the safety director  
8 settled the case or overruled you where you were  
9 not at least informed in advance if not consulted  
10 before that decision was made?

11 MR. COGLIANESE: Objection.

12 A. You have to ask that one again.

13 Q. Do you remember any situations while  
14 you were chief of police where you recommended  
15 somebody for termination and the safety director  
16 settled the case or overruled you where you were  
17 not at least informed in advance if not consulted  
18 before that decision was made by the safety  
19 director?

20 MR. COGLIANESE: Objection.

21 A. Just for termination?

22 Q. Yeah.

23 A. I don't recall whether or not he told  
24 me before he made the decision on Lieutenant

1 McFadden.

2 Q. Do you remember that your  
3 recommendation on McFadden was forwarded to the  
4 safety director and then there was a long delay  
5 between the safety director's hearing and the  
6 determination in McFadden's case because he was  
7 waiting for you to come back for vacation or leave  
8 of some kind?

9 MR. COGLIANESE: Objection.

10 A. I don't recall what the reasoning was  
11 for the delay. It may have well have been, but I  
12 don't recall.

13 Q. Okay. And you don't remember whether  
14 or not he told you before he made that decision?

15 A. I believe the decision had already been  
16 made by the time I found out about it --

17 Q. Okay.

18 A. -- from the director.

19 Q. In Perkins' case, you just can't  
20 remember whether there was consultation or not  
21 about the settlement.

22 A. I don't remember who any contact was  
23 made -- made between.

24 Q. Did you disagree with the decision to

1 bring him back?

2 A. No.

3 Q. Okay. Why not?

4 A. I thought that Officer Perkins made a  
5 very bad decision to not be truthful about the  
6 circumstances of that particular incident. It was  
7 done kind of in the heat of the moment in my  
8 opinion, after a volatile situation. I think that  
9 he realized very quickly that he had made a very  
10 bad mistake and went to his supervisor and  
11 confessed that he had not told him the truth and  
12 that he was remorseful about that and honest about  
13 that mistake. And I thought that he might have  
14 the potential for more value within the division  
15 of police.

16 Q. Okay. I assume you remember a white  
17 officer named Zach Rosen.

18 A. I remember him.

19 Q. Okay. I want to ask you about two  
20 different investigations involving Officer Rosen.  
21 First of all, he was investigated for a -- for  
22 allegedly kicking a civilian in the head while he  
23 was handcuffed. Do you remember that?

24 A. I do.



1 Q. Okay. And he was also investigated and  
2 disciplined for a retaliatory stop of a civilian  
3 who had yelled at him. Do you remember that one?

4 A. I believe that it was a civilian  
5 complaint that had come in from a traffic violator  
6 that had gotten a ticket from him. I don't  
7 remember what the allegation was because it did  
8 not come to me for a resolution.

9 Q. Okay. No departmental charges in that  
10 situation?

11 A. It wasn't brought to me for those --

12 Q. Okay.

13 A. -- charges.

14 They had decided to do a DCC without  
15 consulting with me.

16 Q. Okay. Do you remember becoming aware  
17 that the deputy chief had actually issued some  
18 discipline or counseling to the chain of command  
19 beneath him for not properly disciplining Officer  
20 Rosen in that situation?

21 A. I don't have any specific recall of it.  
22 But I remember being very frustrated that they had  
23 not viewed it as critical misconduct.

24 Q. If you wanted to, you could have

1 instructed them to departmentally charge him,  
2 right? You had the power to do that.

3 A. Not that I'm aware of.

4 Q. Okay.

5 A. They had already disciplined the  
6 officer, and so I -- I'm not aware that I can come  
7 back and do a departmental charge for the same  
8 behavior. He was disciplined and -- I mean, I  
9 don't know that I ever tried it. I don't know if  
10 anybody ever tried it. But, you know, all the  
11 training and advice and all that that I've been  
12 given is that, you know, once somebody has been  
13 disciplined, you can't change that discipline.

14 Q. In the other investigation, the one  
15 where he was accused of using improper force  
16 against the civilian, the allegation was that the  
17 civilian was handcuffed and lying on the ground  
18 and that he had come from a fair distance away and  
19 run over and kicked the guy in the head, right?

20 A. Yes.

21 Q. And there was video evidence in that  
22 situation showing him doing that.

23 A. There is video of that particular  
24 incident.

1 Q. Okay. The video confirmed that he was  
2 not being truthful in his use of force report,  
3 didn't it?

4 A. By -- in what way?

5 Q. Well, his use of force report indicated  
6 that he had placed his foot on the person's  
7 shoulder and held him down, and the video showed  
8 that he had struck him with his foot, to the point  
9 where the guy's head, like, bounced off the  
10 pavement, right?

11 A. Well, you're alleging that he was  
12 untruthful in saying that. It doesn't match up  
13 with what it appears on the video, but you're  
14 saying it's untruthful and it might have been his  
15 perception.

16 Q. Okay. His use of force report was  
17 inaccurate in a way that downplayed the severity  
18 of the incident, putting aside his motive.

19 A. Well, it certainly didn't look as he  
20 described.

21 Q. Because he didn't do what he described?

22 A. That's certainly the way that it  
23 appears, yes.

24 Q. Why did you recommend not terminating

1 Zach Rosen for that incident? Your recommendation  
2 was a three-day working suspension, right?

3 A. For outside policy use of force.

4 Q. Right.

5 A. And I don't know that I've ever  
6 recommended termination for an outside of policy  
7 use of force. I don't remember any comps along  
8 those lines.

9 Q. Okay.

10 A. So it ranges from a written reprimand  
11 to I think the most I gave was like 160-hour  
12 suspension --

13 Q. Okay.

14 A. -- for outside policy use of force or  
15 something along those lines.

16 Q. Rosen's was 24 hours, right?

17 A. Yes.

18 Q. And I assume you did not charge him  
19 with cause for dismissal as you did with Officer  
20 Morgan.

21 A. Correct.

22 Q. Okay. Did you discuss Rosen's case  
23 with the safety director?

24 A. I know that the conversations were had

1 and a number of different ways, so, yes, that  
2 particular incident was discussed a number of  
3 times.

4 Q. Okay. Did you disagree with the safety  
5 director's determination to terminate?

6 A. Yes. Or I would have recommended it.

7 Q. Okay. This by the way was an incident  
8 that was very widely reported in the media and  
9 didn't reflect particularly well on the  
10 department.

11 A. Correct.

12 Q. Was there criminal investigation of  
13 Officer Rosen?

14 A. No.

15 Q. Okay. And Officer Rosen at the time  
16 was still actively under investigation for  
17 shooting a civilian, correct? The shooting  
18 investigation hadn't cleared him at that point?

19 A. I think that's -- I think that's  
20 correct.

21 Q. Did you take that into account?

22 A. Did I take what into account?

23 Q. The fact that he was already under  
24 investigation for use of force against a civilian

1 when he improperly used force another civilian.

2 A. Well, I was aware of it. But what do  
3 you mean by take into account?

4 Q. Did you use it as an aggravating or a  
5 mitigating factor in his discipline, the fact that  
6 he was -- he knew that he was already sort of  
7 under investigation and maybe should have been a  
8 little bit more careful about kicking people in  
9 the head?

10 A. No. I didn't --

11 MR. COGLIANESE: Objection.

12 A. -- consider -- I didn't consider that  
13 they played into each other.

14 Q. Okay. Did you consider the fact that  
15 he had recently been found -- even though you  
16 weren't involved, that he had been recently found  
17 to have made a retaliatory stop of a civilian?

18 A. I can't consider discipline that's  
19 beyond its administrative use time.

20 Q. Was that DCC for the retaliatory stop  
21 beyond its administrative use time?

22 A. I believe it was.

23 Q. What would be the use time?

24 A. Nine months.

1 Q. The --

2 A. And it was not the same behavior. So  
3 it's progressive if it's the same behavior. It's  
4 not progressive if it's different behavior.

5 Q. Okay. Can you shed any light for me on  
6 why Rosen got a shorter suspension than Lyons for  
7 the vehicle stop?

8 MR. COGLIANESE: Objection.

9 A. Different circumstances. Lyons was off  
10 duty, he had no duty to take action. He could  
11 have written down a license plate and drove on.  
12 He could have called the police agency and  
13 reported a hit skip accident if he wanted to.

14 Officer Rosen was in a circumstance  
15 where he had a duty to respond to this particular  
16 incident and he did and he responded in a way that  
17 was inappropriate and so different circumstances,  
18 different rules in play. On duty, off duty. All  
19 of that played into the decision making.

20 Q. Okay. And in your mind what Lyons did  
21 was more severe than what Rosen did?

22 MR. COGLIANESE: Objection.

23 A. I thought it deserved a more severe  
24 corrective action. You know, it's hard to say

1       what's more severe in the sense of public trust in  
2       the sense of a whole bunch of other things. But  
3       based on the behavior and the comparables and the  
4       circumstances and all of that, I thought that that  
5       was appropriate level of corrective action for  
6       that particular use of force.

7       Q.           If we could take a quick break, I think  
8       I'm just about done. But I've got to check with  
9       my co-counsel.

10      A.           Great.

11                   (A short recess is taken.)

12      BY MR. VARDARO:

13      Q.           With one exception, those are the  
14      questions that I have for you today.

15                   The only other question I have is  
16      whether there's anything that we've discussed that  
17      you feel like you need to add to or correct?

18      A.           Not that I can think of.

19      Q.           Then those are all the questions I  
20      have.

21                   MR. COGLIANESE: She'll read.

22                   (Signature not waived.)

23                   (Thereupon, the foregoing proceedings  
24      concluded at 5:21 p.m.)



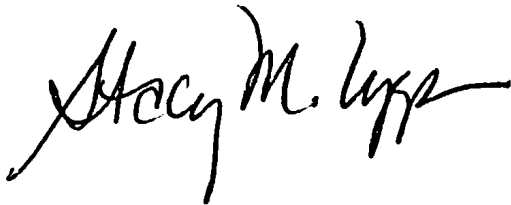
1 State of Ohio : C E R T I F I C A T E  
2 County of Franklin: SS

3 I, Stacy M. Upp, a Notary Public in and for  
4 the State of Ohio, certify that Kimberley K.  
5 Jacobs was by me duly sworn to testify to the  
6 whole truth in the cause aforesaid; testimony then  
7 given was reduced to stenotype in the presence of  
8 said witness, afterwards transcribed by me; the  
9 foregoing is a true record of the testimony so  
10 given; and this deposition was taken at the time  
11 and place specified on the title page.

12 Pursuant to Rule 30(e) of the Federal Rules of  
13 Civil Procedure, the witness and/or the parties  
14 have not waived review of the deposition  
15 transcript.

16 I certify I am not a relative, employee,  
17 attorney or counsel of any of the parties hereto,  
18 and further I am not a relative or employee of any  
19 attorney or counsel employed by the parties  
20 hereto, or financially interested in the action.

21 IN WITNESS WHEREOF, I have hereunto set my  
22 hand and affixed my seal of office at Columbus,  
23 Ohio, on August 2, 2019.

24 

Stacy M. Upp, Notary Public - State of Ohio  
My commission expires August 6, 2021.

Witness Errata and Signature Sheet  
 Correction or Change Reason Code  
 1-Misspelling 2-Word Omitted 3-Wrong Word  
 4-Clarification 5-Other (Please explain)

Page/Line	Correction or Change	Reason Code
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I, Kimberley K. Jacobs, have read the entire transcript of my deposition taken in this matter, or the same has been read to me. I request that the changes noted on my errata sheet(s) be entered into the record for the reasons indicated.

Date\_\_\_\_\_Signature\_\_\_\_\_

The witness has failed to sign the deposition within the time allowed.

Date\_\_\_\_\_Signature\_\_\_\_\_

Ref: SU31482KJ S-SU P-BW

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